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THESIS

**THE POTENTIAL SCOPE FOR USE OF PRIVATE
MILITARY COMPANIES IN MILITARY OPERATIONS:
AN HISTORICAL AND ECONOMICAL ANALYSIS**

by

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December 2005

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COMPANIES IN MILITARY OPERATIONS:
AN HISTORICAL AND ECONOMICAL ANALYSIS**

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ABSTRACT

Soldiers for hire are not a new phenomenon of the twenty-first century; they are as old as war itself. However, in the present day these modern day soldiers for hire are part of well-organized and competently run Private Military Companies (PMC). These companies have proven themselves to be both highly effective and economically efficient. The purpose of this thesis is to identify any functions the Government could outsource to PMC's. This thesis finds that the best types of operation in which to use PMC's are in support of security operations, in small-scale conflicts, and in situations where human rights violations are occurring, yet the rest of the world decides not to intervene. This outsourcing would allow the government to realize cost savings and allow the military to focus on what it does best, its core competencies. Additionally, this thesis outlines potential problems that arise with privatizing warfare and offers proposals to overcome those shortfalls. Finally, this thesis finds that the best way to structure a contract between the United States Government and a PMC is to have built-in incentives to ensure that a PMC not only completes the mission quickly, but also controls costs to the maximum extent possible.

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LIST OF ACRONYMS AND ABBREVIATIONS

AECA	Arms Export Control Act
CEO	Chief Executive Officer
CIA	Central Intelligence Agency
COCOM	Combatant Commander
CP	Cost Plus
CPAF	Cost Plus Award Fee
CPIF	Cost Plus Incentive Fee
DOD	Department of Defense
EIC	East India Company
EO	Executive Outcomes
FAA	Forças Armadas Angolanas
FAR	Federal Acquisition Regulations
FFP	Firm Fixed Price
INCONUS	In the Continental United States
LOAC	Law of Armed Conflict
LOGCAP	Logistics Civil Augmentation Program
MPRI	Military Professional Resources Incorporated
NGO	Non-Governmental Organization
OIF	Operation Iraqi Freedom
PMC	Private Military Company
PMF	Private Military Firm
POW	Prisoner of War
ROE	Rules of Engagement
ROI	Return on Investment
RUF	Revolutionary United Front
SR	Sponsored Reserve
UAE	United Arab Emirates
UCMJ	Uniformed Code of Military Justice
UN	United Nations
UNAMSIL	United Nations Mission in Sierra Leone
UNITA	National Union for the Total Independence of Angola
US	United States

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I. INTRODUCTION

A. BACKGROUND

Mercenaries were used by nearly every empire from ancient Egypt to the colonial British Empire. Greece, Rome, Byzantium, and the Holy Roman Empire all employed mercenaries as part of their fighting forces; even the United States resorted to their use in a few instances.¹ The mercenary's expertise in the art of war has made him valuable throughout history. Today, the mercenary soldier of old has been transformed into the twenty-first century Private Military Company (PMC); a PMC operates in a similar manner to any modern-day business; the only difference is the good it offers its customer – war. This thesis explores whether the U.S. could once again benefit from the use of soldiers for hire.

B. PURPOSE

The purpose of this MBA thesis is to identify a possible outsource option that the Government has not yet exploited: the outsourcing of war to Private Military Companies. This paper gives a brief history of the use of mercenaries, documents recent examples of PMC use, gives a brief overview of ethical considerations and limitations one must consider, and gives recommendations for how the United States could effectively incorporate PMC use into its foreign policy.

C. RESEARCH QUESTIONS

This thesis focuses on two areas. First, it asks the question:

How might Private Military Companies be used to conduct similar missions to those conducted by a state run military in a more cost-effective manner?

Once the above question is answered, this thesis considers the ethics involved with the use of private military actors and attempts to answer the question:

How might the United States employ Private Military Companies as part of its foreign policy and realize the cost savings that such use allows?

¹A few examples are during the Revolutionary War and the Vietnam War. Both these examples and more will be fully discussed in the following chapter.

D. METHODOLOGY

The research methodology for this thesis consists of three components. The first component is an examination of all relevant history concerning mercenaries, soldiers for hire, and private military companies. The examination also focuses on the critiques, limitations, and recommendations expressed by the numerous authors as well as industry experts. The second component is an analysis of a contract the U.S. Government currently has with a private company performing security operations in Iraq. The third component is an analysis of the information gathered in the first two components to identify missions that could best be outsourced to Private Military Companies.

E. ORGANIZATION

Chapter I is a broad overview of this thesis and lays out the general roadmap of the research through a purpose, research questions, organization, and methodology.

Chapter II provides a brief overview of the history of mercenaries from ancient times until the late twentieth century.

Chapter III is an examination of two operations conducted by the PMC named Executive Outcomes in Angola and Sierra Leone in the 1990's. The focus of the examination is on their effectiveness, both economically and militarily; this chapter answers the first research question.

Chapter IV provides a brief overview of the ethical considerations that arise with the use of private military actors and specifically PMC's.

Chapter V answers the second research question by giving three possibilities for PMC use within U.S. foreign policy. Additionally, it speaks to the issues that must be resolved before using private military actors and provides a feasible solution that addresses those issues.

Chapter VI examines a current cost plus fixed-fee (CPFF) contract the Government has with a private company providing security in Iraq.

Chapter VII summarizes the findings of the research and presents recommendations for further research and study.

F. BENEFITS OF STUDY

The primary benefit of this thesis is to explore an outsourcing capability that the U.S. Government has not taken advantage of yet. This thesis pulls together previous research on various topics relating to private military actors into a research topic that has not yet been addressed in any body of work to be found. The following body of work provides upper-echelon Government officials a provocative topic to consider when formulating foreign policy in the future.

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II. SOLDIERS FOR HIRE: A BRIEF HISTORY

A. INTRODUCTION

War and violence are as old as man himself. From the time that Cain killed Abel, man has pitted himself against both brother and foreigner alike in a never-ending attempt to gain power or defend against aggression. Throughout the ages, many men have made war or the conduct of war their life's blood. From the first divisions of labor, some have chosen to earn their living by taking up the sword against their fellow man.² These "mercenaries" have found no shortage of work, as there are always those who lack the fortitude, taste, ability, or comparative advantage to take up arms themselves.³ Once professional soldiers emerged, militiamen, or those who take up the sword because of patriotism or as a last resort, became less likely to succeed in combat when pitted against hired soldiers.⁴

According to Anthony Mockler, "a history of mercenaries would be very little less than a history of warfare throughout the ages."⁵ However, to properly portray their history, we must first agree on what constitutes a mercenary. Many authors and historians have come up with diverse definitions of exactly what a mercenary is. *The Dictionary of Military History* defines the mercenary as a "man working for money."⁶ But this is not nearly specific enough for our discussion here. Another definition, provided by Janice Thompson, describes the quintessential soldier of fortune as "one who

² Frederic C. Lane, *Profits from Power: Readings in Protection Rent and Violence Controlling Enterprises* (Albany: State University of New York Press, 1979), p. 51.

³ Tim Spicer, *An Unorthodox Soldier: peace and war and the Sandline affair* (Edinburgh: Mainstream, 1999), pp. 29-30.

⁴ William McNeill, *The Pursuit of Power* (Chicago: University of Chicago Press, 1982), p. 77.

⁵ Anthony Mockler, *The New Mercenaries*, (New York: Paragon House, 1987), p. 15.

⁶ Andre Corvisier, *A Dictionary of Military History and the Art of War* (Cambridge: Blackwell, 1994), p. 501.

fighters for an employer other than his home state and whose motivation is economic.”⁷ Ultimately a mercenary is loosely defined by three characteristics: “being a specialist, stateless, and paid.”⁸

Tim Spicer, a retired Lieutenant Colonel of the Scots Guard, and the former head of the now defunct Sandline International, says that recent public opinion views the mercenary as “a hired thug who will serve any cause and do any dirty work, provided the price is right.”⁹ This definition is too harsh. Only in recent times has it become popular to look at mercenaries as immoral and their business a dirty trade. From the dawn of history until very recently, this attitude would seem absurd. In fact, in the Middle Ages, being a professional soldier was to be in one of the noblest professions.¹⁰ As man progressed and moved away from his tribal beginnings, soldiers for hire were used more and more.¹¹ Many nations and empires owe their success and even their very existence to the ability of soldiers for hire.¹²

It has been said that money is the root of all evil. While this is debatable, money is definitely the underlying motivation for soldiers for hire. Spicer would argue that some men just enjoy soldiering as a way of making a living, using their skills to do something at which they are good.¹³ However, it is doubtful that these men would take part in this enjoyable activity if there were no financial gain involved. Money alone, however, cannot make a man take up arms and risk his life; there must be something that calls him to this undertaking. There must be within him a desire for violence. As Mockler puts it, the trademark of the mercenary is “a devotion to war for its own sake.”¹⁴

Mercenaries have taken part in nearly every battle ever fought. From the time of the Ancient Greeks, to the Roman Empire, to Feudal Europe, and even until the modern

⁷ Janice E. Thompson, *Mercenaries, Pirates, and Sovereigns* (Princeton: Princeton University Press, 1994), p. 26.

⁸ Philippe Contamine, *War in the Middle Ages* (New York: Blackwell, 1984), p. 99.

⁹ Spicer, *An Unorthodox Soldier*, p. 29.

¹⁰ Corvisier, *A Dictionary of Military History and the Art of War*, p. 501.

¹¹ Anthony Mockler, *Mercenaries* (New York: Macmillan, 1970), p. 16.

¹² Spicer, *An Unorthodox Soldier*, p. 33.

¹³ Ibid., p. 30.

¹⁴ Mockler, *Mercenaries*, p. 21.

day, they have almost always had their place on the battlefield. The main reason for their endurance has been their effectiveness. They achieved superior results at a better value than their militia-man counterparts.¹⁵ Their experience allowed them to become more efficient and to gain a technological advantage. They, in turn, sold their skills to a bidder who valued their “expertise in military technology as well as their professional skills.”¹⁶

B. ANCIENT HISTORY

One of the earliest records of mercenary use was by the Pharaohs of ancient Egypt. At the Battle of Kadesh (1300 BC), Pharaoh Ramses II employed 5,000 *Ne’arim*, Canaanite mercenaries, in his battle formations. Egypt’s enemy, the Hittites, ruled by king Muwatallish, was a force of about 16,000. A portion of these troops, approximately 3,500, were charioteers of noble lineage. These chariots were supported by an infantry of mercenaries and vassals, predominantly of Syrian and Canaanite lineage.¹⁷ Additionally, the pharaohs of both the Old and Middle Kingdoms employed Libyan and Nubian archers while the New Kingdom pharaohs augmented their forces with Libyans, Gauls, Thracians, and Greek Hopelites.¹⁸

The Bible also includes a few instances of mercenary use. In the Old Testament’s book of Exodus, as the Pharaoh chased the children of Israel out of Egypt, his army, that included mercenary augments, was overcome by the waters of the Red Sea. Generations later, before David became King of Israel, he and his followers were employed in the Philistine army of Achish.¹⁹ Later, King Amaziah of Judah paid 100 silver talents to 100,000 valiant Israeli warriors to aid in Judah’s defense.²⁰

Ancient Greece is remembered as the birthplace of democracy and as a mighty civilization that conquered much of their known world. However, paying high wages to

¹⁵ John Haldon, *Warfare, State, and Society in the Byzantine World, 565-1204* (London: UCL Press, 1999), p. 92.

¹⁶ Spicer, *An Unorthodox Soldier*, pp. 30, 32.

¹⁷ Corvisier, *A Dictionary of Military History and the Art of War*, pp. 359, 421.

¹⁸ Ibid., pp. 502, 684.

¹⁹ Peter Singer, *Corporate Warriors: the Rise of the Privatized Military Industry* (Ithaca: Cornell University Press, 2003), p. 20.

²⁰ Corvisier, *A Dictionary of Military History and the Art of War*, p.239.

soldiers became necessary in order to conduct these longer offensive campaigns.²¹ It became obvious that the army could no longer be composed of farmers and businessmen; these workers were the backbone of the Greek economy and were needed at home.²² Instead, starting in the 4th Century BC, mercenaries were called upon to fill the responsibility previously held by a compulsory army.²³ In fact, the Greeks fleshed out not only their army but also their large-scale fleet and navy with hired soldiers from Asia Minor and other societies along the Aegean coast.²⁴ Moreover, shortly after the Greco-Persian Wars, the Athenian fleets predominantly became a mercenary service.²⁵

During the course of the Peloponnesian war, the large scale use of mercenaries developed.²⁶ Their specialized skills were put to use as archers, slingers, and javelin-throwers.²⁷ However, it was not only the soldier for hire that proliferated, but this time period also saw the emergence of the mercenary-leading professional officer.²⁸ One famous example is the mercenary Iphicrates, an Athenian commander who transformed the Greek phalanx from a barbarian undertaking into a disciplined professional force.²⁹ Mercenary captains such as Iphicrates could be considered the forefathers of the *condottieri*, who emerged hundreds of years later in Feudal Italy.

The next major empire of the time, the Persians, also used mercenaries from among their conquered victims. It is said the “great empires employed mercenaries more than other states.”³⁰ The Persians were no exception. They reinforced their native cavalry with hired Scythian and Indian soldiers.³¹ Darius III, the Persian Emperor infamously known for being defeated by Alexander the Great, had previously hired

²¹ Hans Delbruck, *History of the Art of War* (Lincoln: University of Nebraska Press, 1990), p. 144.

²² Delbruck, *History of the Art of War*, p. 146.

²³ Corvisier, *A Dictionary of Military History and the Art of War*, p. 688.

²⁴ Ibid., p. 558.

²⁵ Delbruck, *History of the Art of War*, p. 145.

²⁶ Corvisier, *A Dictionary of Military History and the Art of War*, p. 557.

²⁷ Van Crevald, Martin, *The Rise and Decline of the State* (New York: Cambridge University Press, 1999), p. 31.

²⁸ Delbruck, *History of the Art of War*, p. 149.

²⁹ Ibid., p. 151.

³⁰ Corvisier, *A Dictionary of Military History and the Art of War*, p. 502.

³¹ Delbruck, *History of the Art of War*, p. 212.

10,000 Greek soldiers to assist his army in its wars. These 10,000 became famous after Darius terminated their service and unsuccessfully tried to murder them. They escaped, and their story was later recorded by Xenophon³² as one of history's first novels.³³

The Previously mentioned Alexander the Great conquered his vast empire not with a Macedonian army, but with a force consisting mostly of mercenaries. Part of this force was a 224-ship navy hired from the Phoenicians.³⁴ Upon his death, Alexander divided his kingdom among four of his generals, the *Diadochi*. It was only due to mercenaries that these successors were able to establish their own kingdoms.³⁵ The *Diadochi* assimilated these hired barbarians into the Macedonian-Greek system of warfare.³⁶

C. ROMAN TIMES

Less than a hundred years later in 241 BC, Carthage was defeated by the Roman Republic in the first of three Punic Wars. The Second Punic war (218-212 BC) saw Carthage regain the upper hand as Hannibal led an army of well-trained mercenaries over the Alps into northern Italy. Other than high-ranking officers, all members of Hannibal's force were contracted soldiers.³⁷ Because Carthage had no compulsory service, they recruited hired soldiers from Spain, Gaul, Italy, Greece, and Numidia.³⁸ Additionally, Hannibal employed a force of shepherd sling-shooters from the Balearic Islands against the Romans.³⁹ Ultimately, the Carthaginian downfall in the third Punic War was the Roman capture of their silver mines in Spain. This left the Carthaginians unable to pay their hired soldiers and led to their utter defeat and destruction at the hands of the Romans.⁴⁰

³² Spicer, *An Unorthodox Soldier*, pp. 30-31.

³³ Singer, *Corporate Warriors*, p.21.

³⁴ Singer, *Corporate Warriors*, p. 21.

³⁵ Corvisier, *A Dictionary of Military History and the Art of War*, p. 502.

³⁶ Delbruck, *History of the Art of War*, p. 235.

³⁷ Mockler, *Mercenaries*, p. 16.

³⁸ Corvisier, *A Dictionary of Military History and the Art of War*, p. 110.

³⁹ Wikipedia, http://en.wikipedia.org/wiki/Mercenary#Mercenaries_in_the_classic_era, [Accessed June 6, 2005].

⁴⁰ Singer, *Corporate Warriors*, p. 21.

Although most would think the patriotic citizen serving in the legion to be the typical soldier of the Roman Empire, this is not altogether true. Even from the beginning, when Rome was only a Republic battling Carthage, mercenaries were employed to fill out the ranks.⁴¹ In fact, in 213 BC, Rome persuaded the mercenary Celtibri to defect from Hannibal's army and pledge allegiance to the Roman cause.⁴² Later, Both Marcus Crassus and Julius Caesar augmented their legions with Gallic horsemen. These mercenaries were rewarded not only with pay, but also with Roman citizenship after completing their years of service.⁴³ Recruiting was not limited to Gaul; all the Provinces of the Roman Empire provided hired soldiers. Numidians, Balearics, Iberians, Cretans, and Greeks filled specialty gaps within the Roman legions.⁴⁴ It was the Germanic tribes who developed the best reputation, however, and Rome employed these tribes to help fend off the Mongol invasions.⁴⁵ Thus, by the end of the third century, the Roman Army "was more Germanic than Roman."⁴⁶ One interesting note: after the Roman legions began using high-priced mercenaries, they developed a medical service to provide for them.⁴⁷

The Eastern Roman or Byzantine Empire, as it has become known, continued the trend of importing soldiers for hire into their military service. They referred to these allied barbarians as *foedarati*.⁴⁸ While their usage was only a small part of the Empire's total force, it was crucial because of the mercenary's high probability for success when engaged. These full-time professionals provided a greater value for the money and were much more tactically effective than their militia counterparts.⁴⁹ As well as being effective, they were also loyal.⁵⁰ Because the emperor controlled the treasury, the use of

⁴¹ Singer, *Corporate Warriors*, p. 21.

⁴² Corvisier, *A Dictionary of Military History and the Art of War*, p. 502.

⁴³ Spicer, *An Unorthodox Soldier*, p. 31.

⁴⁴ Delbruck, *History of the Art of War*, p. 413.

⁴⁵ Corvisier, *A Dictionary of Military History and the Art of War*, p. 503.

⁴⁶ Singer, *Corporate Warriors*, p. 21.

⁴⁷ Corvisier, *A Dictionary of Military History and the Art of War*, p. 494.

⁴⁸ Brassey's *Encyclopedia of Military History and Biography*, p. 469.

⁴⁹ Haldon, John, *Warfare, State, and Society in the Byzantine World*, p. 92.

⁵⁰ Ibid., p. 93.

hired soldiers provided the emperor with a high degree of control over his forces. As long as they were paid on time, mercenaries were more reliable and less likely to become involved in internal Byzantine politics.⁵¹ Their major interest was in earning their living, which in some cases was paid to them on a monthly basis.⁵²

In the 533 AD battle of Ticameron, the Byzantine General Belisarius added Hun mercenaries to his cavalry and personal bodyguard to defeat the Vandals.⁵³ Probably the best-known hired soldiers of the time were the Varangian Guard, a force of elite Norse axe-men, who were⁵⁴ hired as the emperor's personal guard. They were so loyal that when the Normans attacked Constantinople, they died to the last man in defense of the emperor.⁵⁵ Other elite corps hired by the empire include the "*Exkoubitoi*, the *Athanatoi* (the immortals), and the *Vestiaritai*."⁵⁶ By the eleventh century, the employment of mercenaries "who continued to fight with order and discipline according to their own traditions and battlefield loyalties"⁵⁷ provided most of Byzantine's royal armies.⁵⁸

D. MIDDLE AGES

After the Roman Empire fell, Western Europe submerged into the Dark Ages and the system of feudalism developed. In feudalism, military service became a product of reciprocal obligation among lords, vassals, and fiefs.⁵⁹ However, there were many limitations on the feudal system. Duty-bound soldiers were not obligated to serve abroad and this presented a barrier to offensive operations. Therefore, many monarchs turned to mercenaries in order to wage campaigns abroad.⁶⁰ As the feudal system broke down, the concept of rewarding soldiers with land was replaced with rewarding them with money

⁵¹ Haldon, John, *Warfare, State, and Society in the Byzantine World*, pp. 93, 269.

⁵² *Ibid.*, p. 126.

⁵³ Franklin D. Margiotta, *Brassey's Encyclopedia of Military History and Biography* (Washington: Brassey's, 1994), p. 141.

⁵⁴ Singer, *Corporate Warriors*, pp. 21-22.

⁵⁵ Spicer, *An Unorthodox Warrior*, p. 31.

⁵⁶ Haldon, *Warfare, State, and Society in the Byzantine World*, p. 93.

⁵⁷ *Ibid.*, p. 225.

⁵⁸ *Ibid.*, p. 125.

⁵⁹ Singer, *Corporate Warriors*, p. 22.

⁶⁰ Thomson, *Mercenaries, Pirates, and Sovereigns*, p. 27.

and gold. The typical soldier was no longer a peasant, but predominantly a full-time professional who was hired and trained by the monarch.⁶¹

As war in the Middle Ages became more protracted and vassals became less eager to submit to their obligated military service, the system of scutage, or shield money, was introduced.⁶² This tax, instituted in 1159 by King Henry II of England⁶³ “allowed individuals to buy their way out of their military obligations.”⁶⁴ These cash payments were then used by the king to hire soldiers who would fight in the vassal’s stead. By the end of the fifteenth century, mercenaries had essentially replaced their feudal forerunners.⁶⁵ Therefore, as long as a king could afford to pay for an army, he had a willing fighting force at his disposal.⁶⁶

The supply of mercenary troops continued to grow as the sovereign became more dependent on their service. Most laws of inheritance benefited only the eldest son. Therefore, any subsequent younger brothers had to seek their fortunes elsewhere; in feudal Europe this was most easily done as a mercenary.⁶⁷ As this situation became more prevalent, the supply of mercenaries became greater than the amount of war demanded.⁶⁸ When there was peace or no war for these ‘free lances’ to fight in, they formed together as “free companions.”⁶⁹

E. FREE COMPANIES

‘Free Companies’ thrived in medieval Europe from about 1300-1450.⁷⁰ Free companies were the precursor to the modern-day private military company and acted as “corporate entities dedicated to making profit.”⁷¹ They banded together with a safety-in-

⁶¹ Margiotta, *Brassey’s Encyclopedia of Military History and Biography*, p. 98.

⁶² Van Crevald, *The Rise and Decline of the State*, p. 158.

⁶³ Mockler, *Mercenaries*, p. 26.

⁶⁴ Thomson, *Mercenaries, Pirates, and Sovereigns*, p. 27.

⁶⁵ Van Crevald, *The Rise and Decline of the State*, p. 158.

⁶⁶ Margiotta, *Brassey’s Encyclopedia of Military History and Biography*, p. 479.

⁶⁷ Michael Howard, *War in European History* (New York: Oxford University Press, 1976), p. 42.

⁶⁸ *Ibid.*, p. 17.

⁶⁹ Mockler, *Mercenaries*, p. 28.

⁷⁰ *Ibid.*, *Mercenaries*, p. 9.

⁷¹ Robert L. O’Connell, *Of Arms and Men* (New York: Oxford University Press, 1989), p. 111.

numbers mentality and went looking for work, blackmailing towns and villages along the way.⁷² They would offer their services to anyone willing to pay and terrorize those who would not.⁷³ From 1300 to 1375, several waves of mercenaries crossed the Alps into Italy in search of more constant employment. The first and most famous of these were the *Almogavares*, an armor-less band of professional infantry hailing from the territories of Aragon and Navarre. They would eventually become known as the Grand Catalan Company. After terrorizing Italy briefly, they made their way to Constantinople and took up service for the Byzantine Emperor against the Turks. They later moved to Athens where they remained in power for sixty-three years. This was quite a remarkable feat as “no company or band of mercenaries has ever before or after achieved such political power and held it for so long.”⁷⁴

Other infamous free companies of the time include: the Knights of the Dove, the Company of St. George, the Great Company, and the White Company. The latter was organized by the Englishmen Sir John Hawkwood who helped successfully transform the goal of free companies. No longer would they only exploit individual members of society for profit. Henceforth, they would enter into the service of an entire city or region, which they would protect.⁷⁵ Anthony Mockler recalls a short story about Hawkwood: Two friars passed him by and customarily greeted him with ‘God give you peace!’ to which he replied ‘God take away your alms!’ They assured him they meant no wrong. To which Hawkwood replied ‘How when you pass by me and pray that God would make me die of hunger? Do you not know that I live by war and that peace would ruin me?’⁷⁶ Such were the men that did battle at that time.

The final foreign free company on the Italian peninsula was that of the Bretons. Hereafter, the Italian states only employed Italian mercenaries, which ultimately gave rise to the *condottieri*.⁷⁷ However, the free companies were not yet on the decline. The

⁷² Singer, *Corporate Warriors*, p. 24.

⁷³ Howard, *War in European History*, p. 25.

⁷⁴ Mockler, *Mercenaries*, p. 53.

⁷⁵ Contamine, *War in the Middle Ages*, pp. 158-159.

⁷⁶ Mockler, *Mercenaries*, p. 50.

⁷⁷ Contamine, *War in the Middle Ages*, pp. 159-160.

Hundred Year War (1337-1453) between England and France saw one of the largest concentrations yet as both sides employed mercenaries. In the interlude between battles, these unemployed soldiers merely lived off the countryside. It was not uncommon for the French King to mount a campaign to neighboring countries, such as Spain and Hungary, with his only aim being to rid France of these hordes.⁷⁸ At the battle of Brignais (1362), these companies united against a common threat; a feudal army sent by the French King to eradicate them. It was their crowning achievement and only a forecast of what was to come.⁷⁹

On May 26th, 1445 King Charles VII of France signed the *Grande Ordonnance*. This sanctioned certain mercenary captains and made them royal officers. These officers were paid by the King based on the number of soldiers they had fighting for them. Those mercenaries not sanctioned were effectively outlawed. Thus with this one law the French created a standing army responsible to the crown. The King then used this army to forcibly rid the countryside of those companies, which he had not sanctioned. This standing army, the first in Western Europe since the fall of Rome, enabled the French to drive off the English and effectively end the Hundred Years War.⁸⁰

F. *CONDOTTIERI*

After the defeat of the Bretons in 1380, foreign-born free companies ceased to exist in Italy.⁸¹ Hereafter, in an attempt to increase allegiance with the mercenary captains they hired, Italian states recruited only native Italians to wage their wars and provide protection.⁸² Thus, states would enter into a contract, or *condotta*, with an independent Italian mercenary captain contractor, or *condottieri*. These *condottas* were very specific. They outlined rates of pay, duration of length, specific tasks to be accomplished, and the number, as well as type, of soldiers to be used.⁸³ Other than a devotion to the terms of the *condotta*, there was no illusion of loyalty by either party.

⁷⁸ Howard, *War in European History*, p. 18.

⁷⁹ Mockler, *Mercenaries*, p. 30.

⁸⁰ Margiotta, *Brassey's Encyclopedia of Military History and Biography*, pp. 484, 732.

⁸¹ McNeill, *The Pursuit of Power*, p. 74.

⁸² Contamine, *War in the Middle Ages*, p. 160.

⁸³ Margiotta, *Brassey's Encyclopedia of Military History and Biography*, p. 480.

This was purely a business relationship.⁸⁴ As such, these *condottieri* could be considered the truest mercenaries that the world has ever seen; their loyalties were governed merely by the lengths of their contracts.⁸⁵

Three basic types of *condottas* were used. The first, a *Condotta a soldo disteso*, was for a native-born captain, with a preset number of soldiers, and called for active service. The second, a *Condotta a mezzo soldo*, was not as strict as the first. It stated that the *condottieri* could roam free in the enemy's land, plundering and raiding, as they desired. The last, a *Condotta in aspetto*, was nothing more than "a retainer paid to the *condottieri* in a time of peace in order to maintain their loyalty."⁸⁶

In 1454 the Peace of Lodi was signed between Venice and Milan. War was waged less frequently and the profession of the hired soldier became overcrowded.⁸⁷ Every time a *condotta* expired, soldiers had to search out new employment. If none could be found, they would either have to change occupations and make their living peacefully, or plunder for a living. These professional soldiers preferred a guaranteed wage to the gambles of plunder or the dreariness of a peaceful vocation. Therefore, the benefits of entering into longer-term contracts became apparent. Subsequently, "long-term associations between a particular captain and a given city became normal."⁸⁸ The larger Italian states had all formed permanent armies of *condottieri* by the middle of the fifteenth century.⁸⁹ In times of peace they would often receive only half wages.⁹⁰

With the current arrangement, the fear of *coups d'état* was always present. Therefore, the civil officials of the various states created a "corps of officers whose careers depended more on ties with civil officials who had the power of appointment and less on ties with the particular soldiers who from time to time might come under a given

⁸⁴ Mockler, *Mercenaries*, p. 45.

⁸⁵ Ibid., p 20.

⁸⁶ Mockler, Anthony, *Mercenaries*, p. 44.

⁸⁷ Ibid., p, 71.

⁸⁸ McKneill, *The Pursuit of Power*, p. 75.

⁸⁹ Margiotta, *Brassey's Encyclopedia of Military History and Biography*, p. 481.

⁹⁰ Contamine, *War in the Middle Ages*, p. 162.

officer's command."⁹¹ Exceptional *condottieri* rapidly became part of the ruling class in Italian cities.⁹² At the end of the fifteenth century the distinction had become blurred; "*condottieri* had become dukes, and dukes had become *condottieri*."⁹³

G. SWISS AND GERMANS

By the end of the fifteenth century, Europe was full of fighting soldiers such as the German *landsknecht* and the Swiss Pike troops who would flock to every corner of the continent to join a fight.⁹⁴ The Swiss were from an infertile poor land, and were therefore more than willing to export their citizen's special skills in war-fighting. Every emerging dynasty of the fifteenth and sixteenth century contained an element of the Swiss or German mercenary.⁹⁵ "*Pas d'argent, pas de Suisses* (no money, no Swiss)"⁹⁶ became a common saying of the time. The Swiss evolved into a highly specialized fighting force that was the most sought after in Europe. They put their military skills with pikes and halberds at the disposal of any willing buyer; for them, war became a "nationalized industry."⁹⁷ Their tactics and savagery filled their enemies with terror. In a time when it took most armies months to marshal their forces, their ability to organize quickly was a major reason for their success.⁹⁸ On January 22, 1506, the great warrior Pope Julius II created the corps of Swiss Guards who serve as the Vatican Guard even to this day.⁹⁹

In response to the threat posed by the Swiss, Emperor Maximilian organized the *landsknecht*.¹⁰⁰ As opposed to the Swiss who hailed from the mountains, the name *landsknecht* literally means "a foot soldier of the plains."¹⁰¹ They recruited from a much

⁹¹ McKneill, *The Pursuit of Power*, p. 77.

⁹² Ibid., p. 76.

⁹³ Mockler, *Mercenaries*, p. 63.

⁹⁴ O'Connell, *Of Arms and Men*, p. 111.

⁹⁵ David Ralston, *Importing the European Army* (Chicago: University of Chicago Press, 1990), p. 5.

⁹⁶ O'Connell, *Of Arms and Men*, p. 102.

⁹⁷ Howard, *War In European History*, p. 27.

⁹⁸ Mockler, *Mercenaries*, pp. 82, 86.

⁹⁹ Ibid., p. 101.

¹⁰⁰ O'Connell, *Of Arms and Men*, p. 102.

¹⁰¹ Mockler, *Mercenaries*, p. 100.

broader geographical area than did the Swiss and the range of social classes who served within their ranks was also greater.¹⁰² In fact, not only did the nobility raise these armies, but also they served as foot soldiers within their ranks. It was entirely customary for nobly-born Germans “to trail a pike.”¹⁰³ The *landsknecht* were even more vicious and barbarous than the Swiss.¹⁰⁴ They were mercenary pike units that “fought neither for king nor cause, but for cash.”¹⁰⁵ Later when tactics began to change, they were more flexible than the Swiss; they were able to successfully incorporate gunpowder into their fighting.¹⁰⁶

H. FAR EAST

So far the discussion has centered mainly on the use of mercenaries by the great kingdoms of Europe and Eurasia and other countries of the same geographical area. However, other areas of the world also used soldiers for hire in their armies. In fact, the Far East has a rich military history that includes the use of mercenaries in several dynasties by countries such as Japan, India, and China.¹⁰⁷ For instance, in China’s Sung dynasty (960-1279), Huns and Mongols were employed to supplement the main forces.¹⁰⁸ Several hundred years later in the 1920’s, white Russian officers were used as both military instructors and officers by Chinese Generals.¹⁰⁹ Less than twenty years later, during the early stages of the Second World War, retired U.S. Air Corps Major Claire Chennault led the ‘Flying Tigers’ against the Japanese on behalf of the Chinese Government.¹¹⁰

Babur founded the Mughal Empire of the Indian sub-continent in 1526. When waging war, Babur commanded an army that consisted not only of his loyal Turkish soldiers but also of “Afghan tribesman, Mongol freebooters, Persian mercenaries, and

¹⁰² Howard, *War in European History*, p. 28.

¹⁰³ Ibid., p. 15.

¹⁰⁴ Mockler, *Mercenaries*, p. 100.

¹⁰⁵ Margiotta, *Brassey’s Encyclopedia of Military History and Biography*, p. 454.

¹⁰⁶ Howard, *War in European History*, p. 28.

¹⁰⁷ Mockler, *Mercenaries*, p. 22.

¹⁰⁸ Corvisier, *A Dictionary of Military History and the Art of War*, p. 502.

¹⁰⁹ Ibid., p. 504.

¹¹⁰ Ibid., p. 504.

Indianized Turks from Delhi, as well as Rajput and other Hindu levees.”¹¹¹ The empire flourished for nearly 200 years until the death of the Emperor Aurangzeb. However, from around 1600 until nearly the 1860’s, India was the stage of a new breed of soldier for hire: the military business venture.

The two most famous of these ventures were the English and Dutch East India Companies (EIC’s).¹¹² These companies were not hired by India, but instead were little more than “an extension to their [home] government’s power.”¹¹³ Originally formed as trading companies, they quickly began competing against each other militarily in order to gain the upper hand and expel competitors. In fact, the Dutch East India Company (EIC) was “established for the purpose of doing Spain as much damage as possible” as well as “preying on Spanish shipping.”¹¹⁴ The Dutch EIC hired Indonesian, European, and local Indian mercenaries to conduct these ‘trading’ operations.¹¹⁵ But it was not only the Dutch; the English EIC also hired mercenaries. Originally the English recruited Indian mercenaries, but later came to depend mostly on Swiss and German mercenaries as they battled their rivals, the French, for supremacy.¹¹⁶

I. MODERN AGE

As Europe moved out from under the dark cloud of the Middle Ages into the modern era, “war became the biggest industry in Europe.”¹¹⁷ No one benefited from this more than the Bohemian military entrepreneur Count Albrecht von Wallenstein. In 1625, he was appointed to commission an army for the Holy Roman Emperor. He not only provided the army, but also manufactured the military equipment, weapons, and foodstuffs at his Bohemian estate. He was not only a powerful political figure in charge of the largest army within Germany,¹¹⁸ but also became the wealthiest man in all of

¹¹¹ Margiotta, *Brassey’s Encyclopedia of Military History and Biography*, p. 666.

¹¹² Singer, *Corporate Warriors*, p. 34.

¹¹³ Van Crevald, *Rise and Decline of the State*, p. 161

¹¹⁴ Thomson, *Mercenaries, Pirates, and Sovereigns*, p. 36.

¹¹⁵ *Ibid.*, p. 39.

¹¹⁶ *Ibid.*, p. 38.

¹¹⁷ *Ibid.*, p. 131.

¹¹⁸ Corvisier, *A Dictionary of Military History and the Art of War*, p. 855.

Europe with control of territory from the Baltic to Bohemia.¹¹⁹ The Thirty Year War (1618-1648), a religious war centered in Germany, was fought predominantly by mercenaries who were recruited by colonels and captains.¹²⁰ The Seven Year War (1756-1763) was funded by English gold and saw English generals lead their allies' troops into battle. The English used Dutch and Austrians in Europe and native Sepoys in India.¹²¹

In the eighteenth century, almost every powerful European army contained elements of hired foreign-born soldiers. The only exception in Europe to have never used mercenaries is Switzerland. The Pre-Revolution French Army was one-third German. In the Baltic Sea Fleet, eighty percent of the officers were not Russian. Moreover, in Bavaria and Russia, the proportions of foreign-born officers were forty and thirty-three percent respectively. The proportion of foreigners in the Prussian army ranged from one third to as much as two thirds.¹²²

J. THE REVOLUTIONARY WAR

The British principally relied on a professional army of volunteers to police their Colonial Empire.¹²³ However, whenever it best suited their interests, they never failed to hire mercenary soldiers. This was precisely the case during the American War for Independence. The British crown feared that their whole army, consisting of only 30,000 troops, would not be able to stand up to the 50,000-man militia the Americans were expected to field.¹²⁴ After unsuccessfully attempting to procure troops from the Russians and the Dutch,¹²⁵ the British struck a deal with Germany for nearly 30,000 additional soldiers. Of these, approximately 17,000 were supplied by the Landsgrave of Hesse-Cassel.¹²⁶ Therefore, the soldiers were referred to as 'Hessians' by the Americans. The Hessians were used at Fort Washington, Red Bank, and Yorktown, just to mention a few.

¹¹⁹ Howard, *War in European History*, p. 29.

¹²⁰ Spicer, *An Unorthodox Soldier*, p. 32.

¹²¹ Mockler, *Mercenaries*, p. 106.

¹²² Thomson, *Mercenaries, Pirates, and Sovereigns*, pp. 28-31.

¹²³ Eliot Cohen, *Citizens and Soldiers* (Ithaca: Cornell University Press, 1985), p. 110.

¹²⁴ Mockler, *The New Mercenaries*, p. 1.

¹²⁵ *Ibid.*, pp. 1,3

¹²⁶ Mockler, *Mercenaries*, p. 128.

Alongside these German mercenaries, the British also employed various tribes of American Indians to supplement their traditional 'red-coat' forces.¹²⁷ However, the Hessians were not as successful as first expected; at Trenton, George Washington bested a force of Hessians and a significant number of them surrendered at Saratoga Springs.¹²⁸

K. NINETEENTH CENTURY TO THE PRESENT

At the dawn of the nineteenth century, Europe was beginning the Napoleonic wars. The French augmented their forces with hired Polish lancers to battle the British. Not to be outdone, England contracted the King's German Legion, an elite group of infantry and cavalry.¹²⁹ Additionally, the British impressed over six thousand U.S. citizens into their royal navy. Unfortunately for the British, this action was one of the actions that brought on the War of 1812.¹³⁰ Other nineteenth-century examples include Simon Bolivar's recruitment of over 5,000 British mercenaries to fight in the Spanish Colonies' War for Independence, Bavarian mercenaries being utilized in the 1823 Greek War of Independence, and Brazil employing Irish and German mercenaries to battle Argentina in 1830. Additionally, Spain, Portugal, and Mexico also hired mercenaries to augment their forces.¹³¹ The aforementioned British were the last state to raise a complete army of foreigners with which to wage war. In 1854 they hired 16,500 German, Italian, and Swiss mercenaries to battle Russia in the Crimean War. Although no states contracted large-scale foreign armies after 1854, the concept of employing mercenaries did not go away.¹³²

The two most famous mercenary groups of the current age are the Nepalese Gurkhas employed by India and Britain, and the French Foreign Legion. The French Foreign Legion was officially created in March of 1831 by a decree of King Louis-Phillippe. They were originally created in order to rid France of the large number of stateless persons who flooded into their borders after the Napoleonic Wars. Their first

¹²⁷ Mockler, *Mercenaries*, pp. 128-129.

¹²⁸ Ibid, pp. 126, 128.

¹²⁹ Spicer, *An Unorthodox Soldier*, p. 33.

¹³⁰ Thomson, *Mercenaries, Pirates, and Sovereigns*, p.31.

¹³¹ Ibid., pp. 88-89.

¹³² Ibid., p. 88.

use was in France's war with Algeria. The legion was broken up and reorganized several times over the following years, but has become legendary as the elite force within the French armed forces.¹³³ It is the only standing force in the world that is composed of multiple foreign nationalities. As of 1983, over one hundred nationalities served within the Legion's ranks.¹³⁴

The British were so impressed with the ferocity and tenacity of their Gurkha adversaries during their war with Nepal (circa. 1815) that they actively sought to recruit them into the British army after the war. The subsequent Treaty of Segauli between Britain and Nepal gave Britain the right to recruit Nepalese citizens into their armed forces. For the next hundred years the Gurkhas cemented their reputation in countless battles under the Union Jack. In 1947, as Britain granted independence to India, Nepal allowed Gurkhas to serve in both the British and Indian armies under the Kathmandu Agreement. The agreement demanded that Gurkhas always receive the same pay as the home countries' soldiers and that they never be forced to fight against fellow Gurkhas. In 1980, there were nearly 100,000 Gurkhas in the Indian army and approximately 8,000 in the British army, though present-day numbers are much lower.¹³⁵ To this day, their reputation for courage and bravery still precedes them.

Employment of mercenaries took on four basic forms in the twentieth century. First, individual foreigners were permanently employed in another state's standing army. The most famous example of this is the French Foreign Legion, which was discussed earlier. The second form is a foreigner force employed via a contract or treaty between two nations; Britain employing the Nepalese Gurkhas is the best example. Third, individual foreigners were hired by state governments to take part in specific battles and conflicts. This brand of mercenary flourished in Africa during the second half of the twentieth century. Last, one state would reimburse a second state for the use of their troops. This was done by the United States during the Vietnam War and will be examined in a later section.¹³⁶

¹³³Spicer, *An Unorthodox Soldier*, p. 34.

¹³⁴Thomson, *Mercenaries, Pirates, and Sovereigns*, p.91.

¹³⁵ Thomson, *Mercenaries, Pirates, and Sovereigns*, pp. 90-91.

¹³⁶ Ibid., pp. 89-90.

Many countries employed foreigners in their standing armies during the twentieth century. In fact, as recently as 1980, eighteen states' standing armies contained foreigners. The Omani army was almost entirely mercenary until 1970. Moreover, the United Arab Emirates (UAE) army was nearly all foreign, consisting of troops from both Oman and Yemen and led by officers from Britain, Jordan, and Pakistan. Britons and Pakistanis also made up the officer base of the Qatar army. Additionally, approximately one-half of the Kuwaiti army was composed of Iraqi and Saudi tribesmen prior to Saddam's invasion in 1990. During the eighties in Saudi Arabia, around 30,000 Pakistanis were employed as combat troops in exchange for billion-dollar aid packages to the Pakistani government. Elsewhere, thousands of Pakistanis were employed in Libya's Islamic Legion in 1981.¹³⁷ In the twentieth century Middle East, Pakistan played a similar role to the one played by Switzerland centuries earlier in Europe.¹³⁸ Elsewhere, Greek officers served in the Cyprus army while French officers were employed by both the Ivory Coast and Cameroon. Lastly, the Solomon Islands hired Fijian soldiers and British officers for service in their armed forces.¹³⁹

As stated earlier, mercenaries, or 'Dogs of War'¹⁴⁰ ran rampant in Africa during the last part of the twentieth century. From 1960 to 1968, both warring sides of the Congo Crisis employed hired soldiers from France, South Africa, Rhodesia, Spain, Italy, Britain, and Belgium. Later in the Nigerian Civil War (1967-1970), both sides employed mercenaries in their struggle to gain power. Angola and Rhodesia also witnessed an influx of foreign mercenaries who were paid to take up arms for a cause that was not their own.¹⁴¹ These recruits were predominantly white-skinned non-Africans who gravitated to the continent seeking out money and war. Later in the nineties, the paramilitary company Executive Outcomes was contracted by the governments of Angola and Sierra Leone to battle insurgents and do the buying government's bidding.

¹³⁷Thomson, *Mercenaries, Pirates, and Sovereigns*, pp. 90-91.

¹³⁸ Thomson, *Mercenaries, Pirates, and Sovereigns*, p. 93.

¹³⁹ Ibid., p. 91.

¹⁴⁰ Spicer, *An Unorthodox Soldier*, p. 40.

¹⁴¹ Thomson, *Mercenaries, Pirates, and Sovereigns*, pp. 93-94.

L. U. S. AND MERCENARIES

The idea of using mercenaries is abhorrent to many Americans. The foundation for this mindset can be traced back to the very origins of the country. In its first ever war, the War for Independence from Britain, the fledgling U. S. was attacked by mercenaries, specifically the German Hessians and American Indians hired by the British. The current perception among the general population is that the United States has never resorted to using mercenaries. This is only somewhat true, however. According to Anthony Mockler “the United States is almost the only imperial power in history that has never employed mercenary troops directly (and only with reluctance and secrecy indirectly).”¹⁴² While the U. S. has never hired a complete foreign army to fight a war, it has contracted for foreign assets with which to complement its own assets. Even in the Revolutionary War, when America’s original distaste for mercenaries was being formed, the Continental Army was countering the German Hessians with its own mercenaries, the *Royal Deux Ponts* Regiment, a German unit hired by the French.¹⁴³ Additionally, Baron Von Steuben, another contracted European, was employed to train the soldiers at Valley Forge and was instrumental in shaping the Continental Army into a veritable force.¹⁴⁴

America’s indirect use of mercenaries did not end in the Revolutionary War. At the behest of President Thomas Jefferson, William Eaton, the U.S. naval agent for the Barbary regencies, led an army 600 miles across the desert of Tripoli in the First Barbary War (1804). The army consisted of a detachment of U.S Marines as well as 500 Arab, Greek, Turkish, and European mercenaries. Their mission was to overthrow the current leader of Tripoli and replace him with his exiled brother Hamet, the rightful heir to the throne. The subsequent Battle of Derna was a success for the American forces. Afterwards, Hamet presented the Marines with a Mameluke sword because he was so impressed with their bravery. To this day, the legend is forever remembered with the line

¹⁴² Mockler, *The New Mercenaries*, p. 5.

¹⁴³ Thomson, *Mercenaries, Pirates, and Sovereigns*, p. 30.

¹⁴⁴ Singer, *Corporate Warriors*, p. 33.

“to the shores of Tripoli” in the Marine Corps Hymn. However, the battle was stopped short due to a treaty signed by the two governments, and the mercenaries were never fully paid.¹⁴⁵

During the U.S. Civil War (1861-1865) the Union army profited from the use of European officers who had fled the unsuccessful European Revolutions of 1848.¹⁴⁶ A decade after the Civil War in 1878, the percentage of enlisted personnel in the U.S. Navy who were foreign-born was 60%. This was despite a legal directive that two thirds of all “seaman be native-born U.S. citizens.”¹⁴⁷

During the Vietnam War, the U.S. Government augmented its forces with troops from South Korea, Thailand, and the Philippines. The separate contracts with each government called for the U.S. to pay “an overseas allowance, a per-diem for each soldier, plus an additional allowance according to rank” in exchange for the military personnel’s use. In addition, the U.S. paid all expenses related to deploying these forces and reimbursed each providing country for the cost of finding replacements in their native army.¹⁴⁸ Additionally, the U.S. also used ethnic Vietnamese to battle against the Viet Cong and the North Vietnamese Army during the war. These Nung and Montagnard tribesman were supplied and trained by the CIA and U.S. Special Forces.¹⁴⁹ Moreover, in 1966 General William Westmoreland explored the option of hiring British Gurkhas for use in the Vietnam War, although this plan did not come to fruition.¹⁵⁰

M. CONCLUSION

Throughout history, many have maligned mercenaries and their trade. Probably the most famous of these is Machiavelli, an Italian political philosopher and theorist of the late fifteenth century. Living in Italy during the prevalence of the *condottieri*, he most likely had good reason to be critical of hired soldiers. However, some of his writings concerning the conduct and performance of mercenaries have been deemed to be

¹⁴⁵ Thomson, *Mercenaries, Pirates, and Sovereigns*, p. 138.

¹⁴⁶ Singer, *Corporate Warriors*, p. 38.

¹⁴⁷ Thomson, *Mercenaries, Pirates, and Sovereigns*, p. 31.

¹⁴⁸ Thomson, *Mercenaries, Pirates, and Sovereigns*, p. 94.

¹⁴⁹ Spicer, *An Unorthodox Soldier*, p. 30.

¹⁵⁰ Thomson, *Mercenaries, Pirates, and Sovereigns*, p. 94.

inaccurate. For instance, “Machiavelli’s scornful accusation that they (*condottieri*) fought bloodless battles is not borne out by the facts.”¹⁵¹ Additionally, he opined that mercenaries were incompetent and lacked the basic will to fight; he complained they commonly fought battles between thousands of troops where only a few casualties resulted. This is also grossly overstated.¹⁵²

Ultimately, the hired soldier could do no right in Machiavelli’s eyes; he made several contradictory comments about their behavior. He accused them of “being incapable cowards and of being only too ferociously efficient”¹⁵³ and “of being both too warlike and not warlike enough.”¹⁵⁴ Mercenaries, for the most part were not the initiators of war; they merely were pawns that sovereigns used to wage war.¹⁵⁵ Moreover, when compared to the sovereigns who employed them, hired soldiers were mere amateurs at duplicity and deceit.¹⁵⁶

The main reason for the use of mercenaries throughout history is that they made sense economically and tactically. Their valuable effective war-fighting skills and their willingness to use those skills were desirable to rulers whose citizens had no desire or little capability to fight. Their use allowed citizens to pursue their civilian occupations and keep up the local economy. In turn, these citizens paid taxes to the ruler who, in turn, paid the soldier for protection or campaigning. This routine kept cities and states safe.¹⁵⁷ The use of mercenaries is an early example of supply-and-demand economics. As long as there were those willing to pay in order to forgo serving in the military, there were those who would accept the challenge for that money.

For hundreds, even thousands, of years, mercenaries have been businessmen. They provided a superior service, their fighting, to the alternative, civilians fighting, for a fee. Mercenary captains would form armies for kings or cities in return for payment.

¹⁵¹ Howard, *War in European History*, p. 26.

¹⁵² Margiotta, *Brassey’s Encyclopedia of Military History and Biography*, p. 480.

¹⁵³ Mockler, *Mercenaries*, p. 50.

¹⁵⁴ *Ibid.*, p. 50.

¹⁵⁵ Mockler, *Mercenaries*, p. 51.

¹⁵⁶ *Ibid.*, p. 48.

¹⁵⁷ McKNeill, *The Pursuit of Power*, p. 78.

Poor states with stagnant economies industrialized war and outsourced their citizens' services to anyone who was willing to pay. Mercenary bands often wore homogenous uniforms supplied by their captain; as businessmen concerned with the bottom line, it only made sense to buy the cloth in bulk and have it cut identically for everyone.¹⁵⁸ It is not by chance that individual soldiers were called 'freelancers', or that together they formed 'companies', and signed contracts (*condotta*). Even though the use of mercenaries is not as prevalent today as it was centuries before, the mercenary has endured because he consistently provides the customer with an efficient and valuable service when others will not.

¹⁵⁸ Margiotta, *Brassey's Encyclopedia of Military History and Biography*, p. 1013.

III. CASE STUDIES: EXECUTIVE OUTCOMES' SUCCESS IN WESTERN AFRICA

A. INTRODUCTION

In the 1990s, Executive Outcomes (EO), a now-defunct private military company based in South Africa, became “the world’s first fully equipped corporate army.”¹⁵⁹ The firm promised five services it could offer its potential clients: “strategic and tactical military advisory services; an array of sophisticated military training packages in land, sea, and air warfare; peacekeeping or ‘persuasion’¹⁶⁰ services; advice to armed forces on weapons selection and acquisition; and paramilitary services.”¹⁶¹ EO was no ‘fly by night’ operation; it was a legitimate business organization with substantial resources to accomplish its mission. Its success stemmed from its use of air power, in-depth intelligence, and superior experience. Angola and Sierra Leone were two countries that contracted with EO for military support. Specifics on each individual case are discussed below. In both cases, EO quickly worked towards accomplishing the goals its employers established, defeated a numerically superior force, and proved more efficient in terms of both results and cost than the state-run military forces that followed.

B. OPERATIONAL CHARACTERISTICS

Executive Outcomes’ greatest capability was “its use of intelligence capabilities to build a profile of enemy activities.”¹⁶² It used radio intercepts, human intelligence, and aerial reconnaissance to build as complete a picture of the battlefield as possible. EO then targeted the enemies operations with air strikes, helicopter attacks, and indirect fire capabilities such as mortars. EO maintained the momentum of these attacks and followed

¹⁵⁹ Thomas K. Adams, “New Mercenaries and the Privatization of Conflict,” *Parameters*, Summer 1999.

¹⁶⁰ No specification is given as to what persuasion entails. It is most likely a form of armed intimidation.

¹⁶¹ Peter Singer, *Corporate Warriors: the Rise of the Privatized Military Industry* (Ithaca: Cornell University Press, 2003), p. 104, taken from the Executive Outcomes home webpage.

¹⁶² David Shearer, *Private Armies and Military Intervention*, (New York: Oxford University Press, 1998), p. 54.

them up with ambushes and ground assaults to ensure the enemy was constantly kept off balance. EO never failed to capitalize on an enemy's weakness or misstep.¹⁶³

EO employed many air assets in both operations. Second-hand American Airlines 727 passenger jets were used to transport company personnel into theater. Once in theater, its air fleet contained Russian Mi-17 armed transport helicopters, Mi-8 cargo helicopters, Mi-24 attack helicopters, and Mig-23 advanced jet bombers. These assets were used to conduct attacks deep within enemy territory. Furthermore, it became standard operating procedure for all ground operations to have the support of at least one attack helicopter and a medical transport plane on standby.¹⁶⁴ Additionally, EO operated two casualty evacuation aircraft that were on constant call. These medical airships were supported by a full-time doctor who was on permanent standby. As another safety precaution, EO procedures mandated that all troop-carrying gunships have a physician on board during ground operations.¹⁶⁵ As a side-note to medical care, EO was the first private military company (PMC) to offer full medical coverage and life insurance for all its employees, regardless of position or location of deployment.¹⁶⁶

Executive Outcomes was not only successful but also cost effective. Other than the company's command element, which was permanently employed, EO drew forces from its employment pool on an as-needed contractual basis. Unlike traditional standing armies, which must pay for their soldiers even when there is no mission for them, EO did not keep forces in the barracks during peacetime. Instead, EO maintained a database of over 2,000 immediately available qualified personnel whom it could call up on very short notice;¹⁶⁷ these personnel were predominantly ex-South African special force soldiers who were very experienced and had previously proven themselves to be capable. The company claimed it could field personnel anywhere in the world within 72 hours.¹⁶⁸

¹⁶³ Singer, *Corporate Warriors*, p. 116.

¹⁶⁴ Singer, *Corporate Warriors*, p. 106.

¹⁶⁵ Al J. Venter, "Sierra Leone's Mercenary War Battle for the Diamond Fields," *Jane's International Defence Review*, Nov 1995.

¹⁶⁶ Al J. Venter, "*How Hired Guns Succeeded where the United Nations Failed*," *Jane's International Defence Review*, March 1998, p.23.

¹⁶⁷ Singer, *Corporate Warriors*, p. 103.

¹⁶⁸ Shearer, *Private Armies and Military Intervention*, p. 55.

Another cost saver was the company's use of cheap ex-Soviet weaponry. This weaponry was readily available on the world market after the fall of the Soviet Union and cost very little due to Cold War overproduction. Additionally, this Russian weaponry was also being used by its enemies. Therefore, EO forces could replenish their supplies every time they won an engagement or captured enemy stockpiles.¹⁶⁹

C. ANGOLA

In March of 1993, UNITA (National Union for the Total Independence of Angola) rebels attacked and captured an oil-storage area in the Northern Angolan town of Soyo. Angola's national defense forces, the FAA (Forças Armadas Angolanas), were unable to defeat and remove the rebels after several attempts.¹⁷⁰ The Angolan Government subsequently contracted Executive Outcomes to do the job. EO assembled a group of between 50 to 80 hired soldiers to recapture the facility from the numerically superior UNITA force. After a fierce engagement, the rebels were defeated and EO was in control of the facility. This event marked a turning point in the military world; a small private military firm was effectively used to accomplish a mission that a national army could not. In fact, after EO forces were relieved by the FAA, the facility at Soyo was once again taken by the UNITA rebels.¹⁷¹

Subsequent to the failure of the FAA to maintain any traction against the rebels, EO was once again hired by the Angolan Government in September 1993. In the initial one-year, \$40 million contract, EO agreed to help train the national forces and direct operations against the rebels.¹⁷² Over the next two and a half years, 500 EO personnel were instrumental in whipping the FAA into a fighting force and helping push back the UNITA rebels.¹⁷³ EO was able to achieve what the powerful militaries of Cuba, East Germany, and Russia were unable to achieve in the previous two decades; force UNITA's leader to the negotiation table.¹⁷⁴ A peace accord was signed in November of

¹⁶⁹ Singer, *Corporate Warriors*, p. 106.

¹⁷⁰ Adams, *New Mercenaries and the Privatization of Conflict*.

¹⁷¹ Singer, *Corporate Warriors*, pp. 108-109.

¹⁷² Ibid., p. 109.

¹⁷³ Shearer, *Private Armies and Military Intervention*, p. 46.

¹⁷⁴ Venter, *How Hired Guns Succeeded where the United Nations Failed*, p. 23.

1994. But personal lobbying by President Clinton in December 1995 convinced the Angolan Government to terminate the contract with EO. The subsequent United Nations (UN) peacekeeping force that replaced EO quickly lost all ground that had been gained and the country once again delved into warfare.¹⁷⁵

During its nearly 30-month tour, EO never employed more than 500 men at one time and charged the Angolan government a total of US\$60 million. In contrast, the UN mission in Angola was far more costly in terms of both manpower and money and produced vastly inferior results. Some estimates put the cost at nearly US\$1 million a day.¹⁷⁶ At the height of the UN engagement, 6,000 blue-helmeted UN peacekeepers were serving in country. The final price tag was US\$4 billion for the failed four-year operation. After the UN admitted failure and withdrew its troops in the fall of 1999, Angola once again succumbed to war that left thousands dead and hundreds of thousands homeless.¹⁷⁷ In other words, engaging the UN cost 60 times as much as EO had cost and resulted in failure.

D. SIERRA LEONE

In the spring of 1995, Marxist Revolutionary United Front (RUF) rebels were threatening to overrun the Sierra Leonean capitol city of Freetown. Most Non-Governmental Organizations (NGO) and foreign embassies had already begun to evacuate the country. In response to this immediate threat, the Sierra Leonean Government entered into contract with EO. The Government established four military objectives for EO: “to secure Freetown, to regain control of crucial resources (in particular the Sierra Rutile mine and the diamond fields), to destroy the RUF’s headquarters, and to clear remaining areas of RUF occupation.”¹⁷⁸ EO was able to deploy its forces in short order, and within nine days of operations it had not only stopped the rebel advance cold, but also had forced the RUF to retreat 126 km into the cover of jungle. After clearing the capitol, EO focused its effort on reclaiming the Kono diamond fields in the eastern part of the country. The return of these mines to Sierra Leonean

¹⁷⁵ Singer, *Corporate Warriors*, pp.109-110.

¹⁷⁶ Venter, *How Hired Guns Succeeded where the United Nations Failed*, p.23.

¹⁷⁷ John M. Goshko, “In Angola, UN Peacekeeping Sounds ‘Retreat’,” *Washington Post*, March 20, 1999.

¹⁷⁸ Shearer, *Private Armies and Military Intervention*, p. 49.

control provided the Government with much-needed revenue and helped the Government pay for the contract with EO. Such balance had been achieved after less than a year of operations that a multi-party presidential election was conducted.¹⁷⁹

In November 1996, the RUF leader, Foday Sankoh, was forced to sign a peace agreement. He later stated that “had EO not intervened, he would have taken Freetown and won the war.”¹⁸⁰ The fighting in Sierra Leone was finally over, and over a million refugees were able to return to their homes. But the newly elected President, Ahmed Kabbah, succumbed to the pressures of the international community and terminated his country’s contract with EO in January of 1997. Three months after EO withdrew, a RUF-supported coup toppled Kabbah’s government and chaos engulfed the streets of Freetown once again.¹⁸¹

The total charge was US\$35 million for Executive Outcomes’ 21-month, roughly three hundred and fifty-man operation in Sierra Leone. In that short time, EO secured the capitol city, brought temporary peace to the war-torn country, and restored the country’s valuable mineral and diamond mines, which accounted for two-thirds of the country’s total export earnings.¹⁸² By contrast, the UN Mission in Sierra Leone (UNAMSIL) cost US\$514 million in 2000 and US\$612 million in 2001, as reported by the U.S. State Department.¹⁸³ Moreover, the peace EO had fostered quickly gave way to fighting under the UN’s 6,000-18,000-man watch and hit its low point when RUF forces took hostage hundreds of UN troops in the spring of 2000.¹⁸⁴

E. CONCLUSION

In its operations in Angola and Sierra Leone, Executive Outcomes proved that private military companies can “offer state forces complementary and efficient services.”¹⁸⁵ It is not clear what the outcome would have been if the leaders of those two

¹⁷⁹ Singer, *Corporate Warriors*, pp. 112-113.

¹⁸⁰ Shearer, *Private Armies and Military Intervention*, p. 51.

¹⁸¹ Singer, *Corporate Warriors*, p. 114.

¹⁸² Shearer, *Private Armies and Military Intervention*, pp. 49,51.

¹⁸³ U.S. State Department Fact Sheet dated 4/12/01.

¹⁸⁴ “Sierra Leone” http://www.globalsecurity.org/military/world/war/sierra_leone.htm, [Accessed Aug 17, 2005].

¹⁸⁵ Shearer, *Private Armies and Military Intervention*, p. 55.

countries had not terminated contracts with EO. However, if Executive Outcomes had stayed in each country, it is hard to imagine the situation eroding to the same level it did under the U.N. peacekeeping force. It certainly would have cost the world community less money, and would most likely have resulted in less suffering and dying by innocent citizens of each country. Executive Outcomes' use in both countries proved that private firms could not only accomplish a mission quickly, but also do so much more cheaply than the government.

IV. ETHICAL CONSIDERATIONS

A. INTRODUCTION

Just as in the days of yesteryear, war and violence are not a monopoly of the state. The twenty-first century battlefield is much different from the battlefields of a century ago. There are, of course, the examples just given of Executive Outcomes, which carried out successful operations in two African countries. However, one only need look as far as his television to see other more recent examples of non-state violence at play. The Taliban and Al Qaeda are two internationally known organizations that are not state run. In fact, they have actually promulgated violence against people in one country whose government is sympathetic to their causes, namely Saudi Arabia. These organizations are made up of men and women fighting mainly for personally driven causes, not for the goals of a particular state. Moreover, the two aforementioned terrorist organizations are not only fighting a coalition of legitimate state-run armies, but also are warring with a plethora of private security companies operating within the combat theatre.

The fact that privatized warfare seems to be here to stay does not mean that one must accept military privatization in total. Even though it has been shown that private security companies can provide an economically viable military alternative, there are many troubling aspects of military privatization. Most involve the lack of oversight for these companies, and the confusion along the lines of accountability. Additionally, many people are disturbed by the fact that these companies profit from war and suffering and ultimately make decisions based upon their bottom lines.¹⁸⁶ According to Patrick Cullen, the behavior and actions of private military companies (PMC's) are influenced by three different bodies: their home government, their host or employing government, and the market.¹⁸⁷ This chapter addresses the ethical issues that come up in the use of PMC's.

As the various ethical considerations of using PMC's are discussed, it becomes apparent that many of the same concerns apply to the use of state-run forces. In other

¹⁸⁶ Peter Singer, *Corporate Warriors: the Rise of the Privatized Military Industry* (Ithaca: Cornell University Press, 2003), pp. 216, 218.

¹⁸⁷ Patrick Cullen, "Keeping the Dogs of War on a Tight Leash: assessing means of accountability for private military companies," *Conflict Trends*, June 2000, p. 37.

words, the use of state-run forces can sometimes lead to the same unintended consequences as the use of PMC's. Moreover, in many cases, it is conjecture as to whether the use of PMC's will indeed lead to those supposed unintended consequences. In fact, some of the arguments given do not actually cite previous shortfalls of PMC's. Instead, the arguments allude to problematic examples that have transpired with the use of state-run forces, hypothesizing that the use of PMC's will most likely lead to that same end result. Therefore, if the argument is that the use of PMC's will result in the same unintended consequences as state-run armies, the claim ceases to be valid; PMC's merely represent an alternative course of action, as undesirable outcomes remain constant.

B. THE MARKET

Proponents of the use of PMC's, and specifically their executives, cite self-regulating market mechanisms as the strongest motivation to ensure the firm's proper behavior. Indeed, PMC's are businesses, motivated by profit seeking to attain certain goals. They do not indiscriminately kill for the sake of killing; instead it is a means to accomplish the mission for which they have been hired. Therefore, they argue that they are less likely to commit war crimes, kill innocent bystanders, or kill indiscriminately. Their good public image is vital to their long-term profit potential.¹⁸⁸ Any "loss of credibility would hurt the PMC's ability to garner future contracts"¹⁸⁹ and would, therefore, be detrimental to their bottom line. Any company that committed such actions and lost credibility would be forced to the fringes of the market. The legitimate companies would 'police their own' in an attempt to give the whole market a semblance of credibility. Additionally, PMC's claim that because they are an outside third party, the probability of their committing atrocities based on deeply rooted ethnic hatred, or as revenge for past injustices, is greatly diminished.¹⁹⁰

The problem arises in that what is best for the company is not necessarily what is best for the public. As stated earlier, a private firm's ultimate goal is profit; its bottom line helps dictate its operational activity. Therefore, if violating the law or committing

¹⁸⁸ Singer, *Corporate Warriors*, p. 217.

¹⁸⁹ Cullen, *Keeping the Dogs of War on a Tight Leash*, p. 38.

¹⁹⁰ David Shearer, *Private Armies and Military Intervention*, (New York: Oxford University Press, 1998).

war crimes were in the firm's best interest, the market fails to be a successful self-regulating mechanism. Additionally, if a client¹⁹¹ requests that the company commit a human-rights violation, it might be in the firm's best interest to do so in order to maintain the client's satisfaction.¹⁹² Not doing so could actually affect the firm's long-term profit. Even if a well-intended firm found out that one of its employees had committed a crime of his own volition, it may not be in the firm's best interest to seek legal prosecution. Public knowledge of the behavior may brand the company as a rogue outfit, thereby dissuading future customers from seeking its services. Unfortunately, it may be in the company's best interest to secretly cover up the situation¹⁹³, and internally fire the guilty individual. This could have further negative consequences, as the guilty party could find employment with another PMC which has no knowledge of his previous misdeeds.¹⁹⁴

Another possibility is that a firm may decide its best interest is to be branded as a company that will do 'anything' for the right price. All businesses seek to set themselves apart from their competition. It is conceivable that a PMC could seek employment by those who want a service that others will not perform, even if it is illegal or unethical. Lastly, there is nothing to stop a PMC from working with drug cartels, rebel groups seeking to overthrow governments, or even terrorists. Even though most people find these groups despicable, a rogue PMC could see the partnership as an opportunity to make a lot of money, regardless of the outcome to society.¹⁹⁵

Adverse selection is another shortcoming of the market defense. PMC's are hired to do nasty jobs; even legitimate operations require them to kill in order to accomplish their mission. There is also the ever-present danger of death to all who are members of the company. Therefore, it is a certain breed of person who seeks employment within a PMC. As Soldiers or Marines, we fight for a range of motives, the predominant ones being patriotism, love of country, freedom, and adventure. However, many members of

¹⁹¹ Client refers to the purchasing governments officials.

¹⁹² In *Corporate Warriors*, Peter Singer gives an example where a private military training company (MPRI) intentionally reduced its teaching of military conduct and laws of warfare to its client (Bosnian military) because the client was uncomfortable with the subject

¹⁹³ Of course, the incentive to cover up is not limited to PMC's. It applies also to government-run militaries.

¹⁹⁴ Singer, *Corporate Warriors*, pp. 217,218, 222.

¹⁹⁵ Singer, *Corporate Warriors*, pp. 219, 224.

PMC's are motivated only by money and adventure,¹⁹⁶ although individual operations may have redeeming qualities.¹⁹⁷ Moreover, the hiring qualifications of a PMC are much different than that of a Fortune 500 company. Congeniality, friendliness, and amiable customer service are not necessarily the personality traits demanded; ruthlessness and effectiveness are. As one industry proponent puts it, a PMC's associates are "...not nice guys. You wouldn't want them to marry your sister."¹⁹⁸ The real danger is that PMC's are a draw for those with a propensity for mercenary activity and those who may have been forced out of a national military for adverse reasons.¹⁹⁹

The last alleged shortcoming of the self-regulating market defense is that the poor are disproportionately affected. According to this argument, when security is a public good, all citizens can equally enjoy the service. The government is required to ensure the safety of all its constituents, even if doing so does not make the most business sense. Because the government is not motivated by profit, the argument goes, it makes its decisions based on the collective good of society. However, the argument continues, when security becomes a privatized good, the best protection goes to those who are willing to pay the most for it. As stated earlier, PMC's base their decisions on their bottom lines; therefore, it is argued that a small, rich neighborhood would be given priority for protection over a poor population center because the affluent members have the means to pay the PMC, whereas the poor members do not. If the poor are disproportionately affected, populations become even more polarized and the legitimacy of the government that was ultimately responsible to provide their security is weakened. Lastly, the poor are again affected as the public military members are drawn out of public service into the hire of the better-paying private companies, thus weakening even further the public defense charged with protecting all of society.²⁰⁰ The problem with this

¹⁹⁶ This is an assumption made by the author.

¹⁹⁷ Executive Outcomes presence in Sierra Leone saved thousands of innocent lives, allowed hundreds of thousands to return to their homes, and allowed a presidential election to take place.

¹⁹⁸ Peter Fabricus, "Private Security Firms Can End Africa's War's Cheaply," *Saturday Star* (Johannesburg), September 23, 2000. Taken from *Corporate Warriors* by Peter Singer.

¹⁹⁹ Singer, *Corporate Warriors*, pp. 221-222.

²⁰⁰ Singer, *Corporate Warriors*, pp. 226-227.

argument is that it ignores the context: PMC's are hired by governments and a government that ignores the desires of the poor can do so whether it is hiring people directly or contracting with PMC's.

C. HOME GOVERNMENT

The home government has two ways to control the actions of a PMC. The first is by the formal means of legislation. For instance, within the U.S, the Arms Export Control Act (AECA) requires PMC's to register and receive a license for each sale of arms or military services to a prospective buyer.²⁰¹ If the U.S. Government does not approve of the customer or of the sale, it can reject the claim and not issue a license. This sort of oversight is effective only if the company wants to maintain good relations with the home government. In order to supersede the government's will, a company could set up an overseas holding company in the purchasing customer's state. This essentially eliminates the home government's involvement. Even if the PMC wants to avoid the semblance of impropriety, sometimes its influence and lobbying are enough to erode the government's objections. One example of this is Military Professional Resource Incorporated's (MPRI) lobbying effort concerning a contract with Equatorial Guinea. Eventually, the uneasiness of a non-American PMC winning the contract overcame the anxieties of MPRI supporting a despotic regime.²⁰²

The second means of home government oversight is more informal, yet carries the possibility of more influence. It is based on the relationships between the PMC and the home government's military and intelligence services. Many of the executives of these companies are former military members themselves, and have many ties to senior members still on active duty. If they were to sever their ties, they would lose one of their best sources of intelligence information. Therefore, in order to ensure garnered support it remains in their best interest to maintain close ties with the home government. However, one does not have to look too far for examples where this informal oversight relationship

²⁰¹ Cullen, *Keeping the Dogs of War on a Tight Leash*, p. 37.

²⁰² Singer, *Corporate Warriors*, p. 223.

fell short.²⁰³ What is certain is that without a strong link between the PMC and the government, no real degree of oversight can be expected via the informal method.²⁰⁴

D. HOST GOVERNMENT

In order to get around the Geneva Convention language against mercenaries, employing governments usually make the PMC's personnel temporary members of the country's armed forces, special constables, if you will. This technically makes them subject to the Geneva Conventions and "subject to the state's obligations under international law."²⁰⁵ As such, the host government is responsible for ensuring that all PMC personnel abide by human-rights conventions. Moreover, regardless of their status, non-state actors such as mercenaries and terrorists are subject to the domestic legislation of the country they are operating in. In theory, this provides the host government with the power to control the actions of those operating within their borders.

In practice, however, most host states possess little power to hold PMC's accountable for human rights violations. For one, it might be in their best interest to overlook the violations in order for the military operation to be completed in the most efficient and expedient manner. Pursuing the issue might cause delay or keep the desired end state from ever being reached. Even if a weak state wanted to pursue legal action, "[I]t is debatable, and perhaps doubtful, whether a PMC would even allow its employees to be tried in a weak state's judicial system, if such violations were to occur."²⁰⁶

E. OTHER CONCERNS

There are many unintended consequences when a country contracts with a PMC. First, if the company trains one element of the society, even only in defensive tactics, it upsets the balance and gives the trained side an advantage. This could result in ethnic cleansing or lopsided victories after the PMC has left the country. This was the case in

²⁰³ AirScan and Ronco were two U.S. companies that supplied weapons to the Sudanese People's Liberation Army rebel group and breaking the UN arms embargo in Rwanda. Both these actions were contrary to U.S. laws against aiding these groups. Taken from Patrick Cullen's article *Keeping the Dogs of War on a Tight Leash*.

²⁰⁴ Cullen, *Keeping the Dogs of War on a Tight Leash*, pp. 37-38.

²⁰⁵ Shearer, *Private Armies and Military Intervention*, p. 71.

²⁰⁶ Cullen, *Keeping the Dogs of War on a Tight Leash*, p. 38.

the Balkans where the Bosnian army was benefited by the help of MPRI.²⁰⁷ A second unintended consequence that is commonly argued is that there is no guarantee of what a client will do with the training once the PMC has left. It could choose to follow the tactics but disregard the lessons on human rights observances. The two most common examples of this cited, Idi Amin (Uganda) and Manuel Noriega (Panama) were both Western-trained soldiers who disregarded many of the values they learned and pursued a course of crime.²⁰⁸ The fact that neither of these two men benefited from PMC training decreases the validity of this argument. Lastly, the state-run military may view the importation of a PMC as a slap in the face and a signal of its own failure.²⁰⁹ This could have long-term consequences²¹⁰ after the PMC has left the country, and the state-run military is once again solely responsible for providing security.

The last and probably greatest concern regarding the use of PMC's is their lack of accountability. In the U.S. military, soldiers are subject to the UCMJ. Moreover, the military is subject to the President and Congressional oversight. Any deviations from the rules can carry swift justice with a heavy hammer. There is no such body of law to govern the conduct of PMC personnel. Although they can be subject to international law under the host government's process, as stated earlier, this is not an effective means of accountability. Additionally, these laws apply only to the individual, and not to the companies or industry as a whole. Therefore, PMC's are subject only to the laws of the market, and the shortcomings of the market have been clearly addressed earlier.

This lack of accountability is as big an issue as ever. On May 28th, 2005 several U.S. Marines made accusations that personnel from a U.S based company, Zapata Engineering, fired indiscriminately on both Iraqi civilians and U.S. Marine observation posts. The workers were detained by the military and questioned, but ultimately let go, even though several Marines reported that they witnessed them committing this careless

²⁰⁷ Even though they only taught them defensive tactics, there is a definite carry over into their offensive capabilities.

²⁰⁸ Singer, *Corporate Warriors*, pp. 220-221.

²⁰⁹ Shearer, *Private Armies and Military Intervention*, p. 68.

²¹⁰ There are numerous possibilities that could arise in this situation: One, a delegitimized view of the state run force by the populace. Two, an unwillingness of the home military to do their job once the PMC has left country. Three, an inability of the force to meet recruiting goals because of its perception as inferior. Four, possible retribution or cruelty by the force as a means of reestablishing their authority.

and dangerous behavior.²¹¹ Whereas the U.S Military has clear rules of engagement (ROE) that are enforceable under the Uniformed Code of Military Justice (UCMJ), it is not clear that the civilian contractors must follow any such ROE. Moreover, because the civilians were ultimately let go, it becomes apparent that there is still no clarity as to whom these contracted battlefield combatants must answer to and what their lines of accountability are.

F. CONCLUSION

Just because you can do something, it doesn't necessarily mean that you should. That is a good lesson that parents teach their children, and it is a good lesson regarding the use of PMC's. While the use of these companies can be highly effective and economically efficient, there are many issues that must be considered as well. Though proponents claim that the market will regulate their behavior, as we have seen, the market can also cause them to partake in bad behavior. Host and home governments also carry the power to curtail and monitor PMC activity. However, the home government must have good ties with the company in order for that oversight to work. Additionally, the host government must be in a position from which it can wield power, and unfortunately this is usually not the case; this explains the need for the PMC in the first place.

The use of PMC's is also rife with the possibility of unintended consequences. However, it must be understood that those same consequences can come as a result of state-run military intervention in a country. There is no guarantee, for example, of what the Iraqi police force and military will do with their newly acquired knowledge once the U.S. military leaves their borders. They could use it to attack Iran or similarly they could attempt to cleanse their country of a minority such as the Kurds or Chaldeans.

The most serious cause for concern with PMC's is their lack of accountability, however. There are simply very few mechanisms in place by which you can hold members of these PMC's to any standards.²¹² Currently there are over 20,000²¹³ private

²¹¹ Nathan Hodge, "Army Chief Notes 'Problematic' Potential of Armed Contractors on the Battlefield," *Defense Daily*, August 26, 2005.

²¹² There could be a regulatory body that oversees the actions of all those within the PMC industry the same way that the FDIC helps regulate the banking industry.

²¹³ Brookings Institution estimates.

security contractors in Iraq, most playing by their own rules. Though some²¹⁴ have called for a standard set of rules for them to follow, there has been no action. It seems as if the United States Government and “the international community simply does not want tough legislation on this issue.”²¹⁵

With all their negative possibilities, PMC’s still have a valid purpose. “These companies respond to demand.”²¹⁶ They operate in areas that “are often the scenes of the worst violence in the world today”²¹⁷ because others will not; they have stepped up while the international community has stood idly by. Regardless of their motives for profit, when they are working towards the public’s best interest, “they hold the capacity for better moral outcomes than what would occur otherwise.”²¹⁸

²¹⁴ Those calling for reform and clarity range from previously cited authors such as Peter Singer and David Shearer to members of Congress and even U.S. military commanders conducting operations in Iraq.

²¹⁵ Cullen, *Keeping the Dogs of War on a Tight Leash*, p. 37.

²¹⁶ Shearer, *Private Armies and Military Intervention*, p. 74.

²¹⁷ Singer, *Corporate Warriors*, p. 216.

²¹⁸ *Ibid.*, p. 228.

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V. USES OF PMC'S

A. INTRODUCTION

During the Cold War, the United States' main enemy was the Soviet Union. The military was set up to fight the Soviets in a large-scale war that luckily never came about. The fall of the Berlin Wall on the 9th of November 1989 marked the beginning of the end of the Cold War and the commencement of a change in focus for the U.S. military. However, this change came about slowly. Even after the Soviets ceased to be a threat and the Russian military's assets (planes, helicopters, small arms, missiles, tanks, etc.) were sold off piece-meal on the black market, as well as in sales to foreign nations, the U.S. still prepared for a large land war with another world power. The only problem was that there was no such foe on the world stage.

The subsequent military actions taken by the U.S. over the next decade served as a wake-up call for the military to realign. Units began to rely less on heavy armor and instead concentrated on becoming 'light and fast.' Additionally, because of a shrinking budget, personnel cuts became commonplace.²¹⁹ The military that deployed to Iraq for Operation Iraqi Freedom (OIF) in 2003 was a much smaller and lighter version of the one that deployed to Kuwait in 1991 for Desert Shield/Desert Storm. However, it is still not clear that the military has the right focus. This is evidenced by the fact that the Secretary of Defense is continuing to make transformation a top priority.

It took our military a matter of weeks to overthrow Saddam Hussein and his regime. It took only slightly longer to overthrow the Taliban in Afghanistan. It is clear that when it comes to fighting a significant battle with a known enemy, the United States military is the best in the world. However, more than three years later in Afghanistan and over two years later in Iraq, it is becoming clear that the U.S. is not nearly as successful when it comes to police action and security. This is because security is not one of the military's core competencies; large-scale wars are the U.S. military's core competency.

²¹⁹ According to the Department of the Air Force FY 2004/2005 Biennial Budget Estimates, air force active duty end strength has fallen 37% from 1989 to 2005. Over the same period, the Army and the Navy have seen similar reductions, with a 33% and 38% drop, respectively. Additionally, the navy has reduced its fleet from a 570 ship fleet in 1990 to a current fleet of 288.

Gary Hamel and C. K. Prahalad, in their innovative article “The Core Competence of the Corporation”, explain a core competency to be something that a company can do better than its competitors.²²⁰ Modern business theories suggest that most activities that are not part of a company’s core competency should be outsourced. Does this mean that the Department of Defense (DOD) should outsource every task the military has that is not a core competency? Over the past decade, many functions have been outsourced in the Government’s effort to benefit from the cost effectiveness of the private sector. However, these have been primarily in the logistical and support realms. The army’s logistics civil augmentation program (LOGCAP) contract with Haliburton is the best example.²²¹

This author believes the trend can be continued, and that there might be additional functions that can be outsourced which will lead to further cost savings. These proposals are somewhat radical, but given the nature of warfare that has developed over the past few years and the direction in which the military is heading, it is possible that one or all of these proposals could be implemented. There are at least three areas where the U.S. Government could employ private military companies (PMC) as part of its foreign policy. The first is in the realm of security operations in areas such as Iraq. The second is in small-scale conflicts such as Haiti. The last is in situations where the U.S. does not want to use its uniformed personnel because of the political implications it could have both domestically and abroad, but where a military intervention is perceived to be a good idea; Rwanda is a good example where a PMC could have made a significant impact, possibly saving hundreds of thousands of lives.

B. BENEFITS OF THE PMC

One of the age-old criticisms of mercenaries is that they benefit from prolonged conflict; once the war is over, they are unemployed. Therefore, the argument is that it is in their best interest to ensure that a war lasts as long as possible, regardless of the consequences. However, one must realize that PMC’s are not the traditional type of

²²⁰ C.K. Prahalad and Gary Hamel, “the Core Competence of the Corporation,” *Harvard Business Review*, May 1, 1990.

²²¹ Other examples include security companies such as Blackwater who are guarding military installations in the Middle East, private guard companies manning the gates at military bases INCONUS, the turnover of support functions such as food preparation, and the privatization of our travel and moving functions to companies such as SATO.

mercenary; instead they are businesses. As with any other business, time is money to a PMC. The quicker a PMC can bring about the end of a war it has been hired to conduct, the better it usually is for its profit margins.

A PMC's business reputation is on the line every time it signs a contract. If a PMC shows itself to be highly skilled, it can help establish a positive reputation. Conversely, if it does not prove itself to be efficient and cost-effective, there is a risk of damage to its future business reputation. Therefore, a PMC is best served financially by ensuring a quick and successful end to any conflict it is hired to carry out. Moreover, due to limited personnel and other business constraints, it would be difficult for a PMC to move on to its next business relationship until it completes its current one; the economic cost of prolonging a conflict could therefore be the loss of another contract, which carries the prospect of more money.

PMCs are able to limit costs by employing a minimal level of employees when they are not carrying out a contract. On the other hand, when in the performance of a contract, the longer a PMC is involved in a conflict, the more costs it incurs by paying salaries to its increased employee base. Likewise, it is not in the best financial interest of a PMC to own every piece of gear it could possibly need to execute a mission. As a result, PMCs lease or rent items such as helicopters, jets, specialized weaponry, or vehicles that they do not own but need to successfully carry out a mission. The longer a PMC prolongs a war, the higher its leasing costs. The increase in both these costs, leasing and personnel, erodes the PMC's profit margin. Therefore, the faster a PMC can complete its mission, up to some point, the more it can control costs, and the higher its profit margin will be.²²²

C. POSSIBLE OPPORTUNITIES

Peter Singer, author of the book *Corporate Warriors*, argues that PMCs could benefit from the increased proliferation of warfighting taking place in order to wage the war on terror. He says:

(t)he United States and its coalition allies may become engaged in regions of new strategic relevance, which had previously fallen out of the scope of

²²² Douglas J. Brooks, "The business end of military intelligence: private military companies," *Military Professional Bulletin*, Jul-Sep 1999, Vol. 25, Iss. 3, p. 43.

policy, such as U.S. forces' deployment to Afghanistan, Yemen, and the Philippines. However, this comes at a cost. Their attention and force levels in other areas will drop, creating a gap that PMF's [Private Military Firms] will fill.²²³

While this is undoubtedly possible, it could just as easily be argued that there are "possibilities for these companies to complement international and regional peacekeeping efforts."²²⁴

The U.S. military is currently involved in two separate conflicts. These operations have stretched the military thin, as a majority of the assets within the Department of Defense is being used. While the services continue to accomplish their missions, there is a question of how long they can continue to maintain their vigorous deployment cycle. With approximately 130,000 servicemen and women deployed at any one time to Iraq and another 18,000 in Afghanistan, there is growing political pressure for the U.S. to scale back. Even without this political pressure, these massive deployments severely limit the DOD's options if another use of force is needed somewhere else in the world. One remedy to this shortfall would be the use of PMC's.

The U.S. has already demonstrated a willingness to use private contractors in roles that go well beyond logistical support. In fact, the U.S. has obligated well over \$766 million to private security firms thus far in Iraq.²²⁵ Hiring PMC's to actually augment the current force is the next logical progression. Doing so would carry many inherent risks, as discussed in the previous chapter, but would also have many benefits. First, it would allow the military to decrease the number of personnel that they have deployed at any given time and give a much needed reprieve to the operating forces. It would also provide the Department of Defense more options and flexibility in the event another action is needed. Second, the use of PMC's could prove to be cheaper than the use of the military. However, this is dependent on several things, including how the contract is written, and will be discussed in the next chapter.

²²³ Peter Singer, *Corporate Warriors: the Rise of the Privatized Military Industry* (Ithaca: Cornell University Press, 2003), pp. 232-233.

²²⁴ David Shearer, *Private Armies and Military Intervention*, (New York: Oxford University Press, 1998), p. 76.

²²⁵ GAO Report, *Rebuilding Iraq: actions needed to improve use of private security providers*, July 2005, p.3.

Third, the use of a PMC's decreases the likelihood of service member casualties due to the fact that fewer soldiers would be within the theatre of operations. This could be of great benefit to the military because it is the loss of our uniformed personnel that causes the public to lose its resolve.²²⁶ Although it does not make sense, the American citizenry are more concerned with the death and injury of military members than they are with the death of private contractors.²²⁷ Many citizens rationalize this by saying that 'it is the contractor's choice to be there.' At last check, the U.S. has an all-volunteer military, but on such an emotional issue, logic is never the prevailing sentiment. It most likely also has a lot to do with the average age of service members, the majority of whom are not far removed from high school and are not old enough to drink. They are America's sons and daughters.

D. STIPULATIONS

In order for the U.S. to use PMC's effectively, clear rules of engagement will have to be established. Additionally, many of the ethical questions regarding the actions of its members will need to be addressed up front. This will require the implementation of new policy that is strictly enforceable. It is imperative that there be repercussions for those PMC members whose conduct does not meet U.S. expectations. When employed, a company must understand that it "becomes an extension of government policy and, when operating in foreign lands, its diplomat on the ground."²²⁸ Their conduct should be as such, and if not, there need to be punishments both to individual members and to shareholders. It is also crucial that PMC's not be allowed to act as independent organizations with no oversight. The contract with these companies should explicitly state to whom they answer. As the customer, the military should have as much authority as possible over their actions. Last, there needs to be a decision made as to how these members will be classified if captured by the enemy. Although it is certain that terrorists will not abide by the Geneva Conventions, it is imperative that the Geneva Conventions be updated to include the status of private military actors and their treatment when captured.

²²⁶ It was a loss of the public's resolve that forced the U.S. out of Vietnam and the fear of which caused President Clinton to withdraw troops from Somalia.

²²⁷ Singer, *Corporate Warriors*, p. 232.

²²⁸ Ibid., p. 236.

E. SPONSORED RESERVE

One solution to the stipulations listed above is the British sponsored reserve program. The sponsored reserve (SR) is an innovative approach of using civilians with special reserve status in operational support roles. During peacetime, workers carry out their normal work functions as members of a company that is contracted with the government. During hostilities, however, they are activated and deployed as uniformed military members to a contingency, not as contractor employees.²²⁹ Therefore, they are subject to the same rules and regulations that all uniformed members are.²³⁰

Tailoring the SR program to the use of PMC's makes sense and resolves many of the problems arising from the use of private military actors.²³¹ First, because the PMC's members are on active duty, the issue of whether they are combatants or noncombatants is resolved; they are combatants. This overcomes the argument that private military actors violate the Law of Armed Conflict (LOAC). LOAC is comprised of two bodies of law: Hague Law and Geneva Law. LOAC classifies participants in armed conflicts as either combatants or noncombatants. To be a combatant, individuals must satisfy all of the following conditions: One, they must be commanded by a person responsible for subordinates. Two, they must have a fixed distinctive sign recognizable at a distance. Three, they must carry arms openly. Four, they must conduct their operations in accordance with LOAC. Noncombatants are not to be deliberately targeted by the enemy and are not to take part in direct hostilities towards the enemy; only combatants are allowed to take direct action against the enemy. If a noncombatant takes part in the hostilities, he is in violation of LOAC and loses his entitlement to a prisoner of war POW status if captured and is subject to trial and punishment as a war criminal.

Second, it deals with the issue of accountability; with an active duty status, PMC's would fall under the control of the Combatant Commander (COCOM). Additionally, its members would be subject to the rules of engagement issued by the COCOM. Last, it addresses one argument that many opponents cite as the main reason

²²⁹ Their job function does not change once they have been activated. For example, someone who was a jet mechanic before deployment would function only as a jet mechanic once activated.

²³⁰ Stephen M. Blizzard, "Increasing reliance on contractors on the battlefield; how do we keep from crossing the line?" *Air Force Journal of Logistics*, Spring 2004.

²³¹ The entire PMC would be brought on active duty and would continue to function as a PMC.

for not using civilians on the battlefield: their right to walk away at any time if they deem the environment too dangerous. Under the SR concept, a PMC's members would lose their right to abandon a mission; doing so would risk their prosecution under the UCMJ. There is a tradeoff here that should be noted. The upside is that because the PMCs would be required to stay, they would have to fulfill their mission. The downside is that by not allowing the PMC to walk away, the government would lose valuable feedback information that normally exists in a market—there are some cases in which it is a good idea to walk away.

F. INTEGRATION

The best strategy for using PMC's in Iraq would not be to mix them in among the military. This would create too many difficulties and confusions in command and control. Instead, provinces²³² of Iraq that have been pacified²³³ should be turned over to PMC's, freeing military members to concentrate on those areas where an enemy stronghold persists. This increase in military focus of the troubled areas might be enough to help rid the sector of insurgents and bring relative peace to areas where it had not previously been. Freeing up military members would also enable the services to decrease the number of personnel required in the country at any one given time. PMC's could also be used to help train the new Iraqi military and police forces. Just as Military Professional Resources Incorporated (MPRI) helped train the Croatians in the Balkans, a PMC's knowledge could be put to great use helping prepare the Iraqis for autonomy.

Although it might be too late to implement these ideas in Iraq, it most likely is not. The U.S. military will likely have a presence in Iraq for years to come. More than ten years later, there is still a handful of U.S. military personnel in the Balkans; and over fifty years later, there is still a significant U.S. military presence in South Korea. Even if it is too late to implement in Iraq, however, that does not make the idea irrelevant. The U.S. military played a 'police' role in the Balkans for several years. Now it performs that same function within Iraq. It is highly likely that there will be another situation within

²³² There are 18 provinces in Iraq. "Military commanders in Baghdad and Washington say four Iraqi provinces are home to 85 percent of the daily attacks." As quoted by Tom Lasseter in "U.S. snipers hunt bombs, fight despair", *Lexington Herald-Leader*, Oct 2, 2005.

²³³ The term pacified is referring to the fourteen provinces accounting for only 15 percent of the daily attacks.

the next decade where our military is required to step back from its core competency of warfighting and assume a peacekeeping role. If so, there could once again be a possible application for PMC's. However, it would be crucial for the Government to set the stage now and not wait until the next conflict emerges. Action needs to be taken immediately to amend the Geneva Conventions, and Defense policy-makers would be wise to hash out the details of PMC use beforehand.

Another area where the U.S. could use PMC's is in small-scale conflicts. As mentioned earlier, full-scale, high intensity conflicts are the U.S. military's core competency. That is not to say, however, that the military is not successful in smaller conflicts. On the contrary, it has been very successful. Grenada, Panama, and Haiti are all good examples of the military's success in small-scale wars. However, could the same end result have been achieved by another alternative at a lower cost?

It was shown in an earlier chapter that Executive Outcomes' success in Sierra Leone cost significantly less than the U.N.'s operations in that country. Although the U.S. military has little in common with a U.N. force, and the two should not be compared, neither force is tailor made for the specific mission it is trying to accomplish. The U.S. relies on overwhelming force in its missions. In order to achieve this numerical advantage, the entire military war machine is employed. Even for a small operation, numerous vehicles, aircraft, and even ships are employed to ensure victory. This employment comes at a significant price. On the other hand, PMC's deploy and employ only the equipment they need. As a business, they make their decisions based on their bottom line. They employ enough equipment to ensure victory, but do not employ so much as to be economically inefficient. This streamlined approach is one of the main factors that makes PMC's cost effective. Therefore, PMC's could be a viable alternative the next time the U.S. is faced with a small-scale conflict in a country such as Haiti. Instead of the U.S. throwing a large percent of its resources behind a force of approximately a thousand warfighters, the U.S. could outsource the contract.

The last situation where the U.S. could use PMC's is in areas where human rights violations are occurring and the rest of the world turns a blind eye. In many of these situations, the U.S. decides it is not in the country's best political interest to get involved

and send its military. For whatever political reason, it is determined that it is not worth the risk. However, looking on as hundreds of thousands of innocent people die should not be an acceptable option. Prior to the genocide in Rwanda, Executive Outcomes was contacted by the U.N for possible use. Lafras Luitingh, a former chief executive officer (CEO) of the company, estimated that a force of 1,500 EO personnel could save up to 200,000 lives.²³⁴ The U.N. decided not to pursue that option, or any option for that matter, and disastrous consequences ensued; estimates are that over 800,000 Rwandans were massacred. Not only should the U.S. consider employing PMC's as a way of protecting lives, but also the U.N. should consider using PMC's as an alternative to its ineffectual force.

The prospect of the U.S. sending a hired force to another country will no doubt inflame some protestors. However, these same individuals would likely be just as angry if the U.S. instead deployed its uniformed troops to the same conflict. Despite the overall good an intervention of this type could have on mankind, there are those who will never accept it as a feasible solution. However, to those with an open mind, the perceptions of the U.S. using a hired force might not be as negative as seeing U.S. soldiers with the American flag on their uniform. It would be much harder to use pictures of PMC members to incite hatred and aid in recruitment of terrorists than it would be to use pictures of clearly identified U.S. military personnel.

G. CONCLUSION

The DOD has been inching towards the use of PMC's with the actions it has taken over the past decade. Privatized armed guards man the gates at military bases in the United States as well as in Kuwait and Iraq. Fifty years ago it would have been unthinkable to have privately armed security personnel on the battlefield; today their presence in Iraq is common. Private contractors operate various weapon systems on numerous U.S Navy ships, and so on. The privatizing of the U.S. military and specifically its warfighting functions is likely to increase over the coming years.

The use of a PMC is not likely to be a popular idea with many, at first. The stigma attached to using individuals perceived as mercenaries will certainly cause some

²³⁴ Information taken from the History Channel documentary "Soldiers for Hire".

to reject the idea without due consideration. Those in the armed forces might view it as a threat to job security or as a slap in the face concerning the military's abilities. It should not be viewed as such. As the U.S. executes the global war on terror, it is becoming evident that the scope of war will continue to be varied and dispersed. PMC's should not be viewed as a replacement for the military, but as a complement; the use of PMC's as a special reserve force would be one way to augment the current force. Instead of the services pursuing a 'jack of all trades, master of none' strategy, they would be better served to concentrate on their core competencies and outsource those functions that are not. The three possibilities listed above are not an all-inclusive list, but only a starting point. As the face of war continues to evolve, more opportunities to outsource to those specializing in a particular military function will present themselves.

VI. IRAQI SECURITY CONTRACT ANALYSIS

A. INTRODUCTION

Outsourcing allows the Government to realize cost savings by allowing a more economically efficient private enterprise to accomplish the same mission previously carried out by the government. Once the U.S. Government decides to use PMC's as part of its foreign strategy, the contracts the Government signs with these companies must be written in such a way as to ensure the Government can maximize the benefits such an agreement allows. Failing to do so and allowing the outsourced function's costs to rise to levels higher than beforehand contradicts the intended purpose of outsourcing in the first place. As of yet, there are no examples of the Government contracting out a military operation to a PMC. However, there are numerous examples of Government outsourcing within a combat theatre; for example, the army's LOGCAP contract with Halliburton. This contract has faced intense scrutiny because there is a perception the Government has not provided an adequate level of contract oversight and has allowed costs to rise to an unacceptable level. It is imperative that no such perceptions exist in any contract with a PMC; the contract should be written so that it is immediately apparent to the casual observer that using the PMC was in the best financial interest of the Government.

Presently, Government outsourcing in Iraq is at an unprecedented level. As of December 2004, more than \$766 million had been obligated for private security providers. Some may question the need for this outsourced function; however, the fact remains that providing security for outside agencies and private contractors not directly supporting the military's mission is not part of the U.S. military's responsibility. Therefore, private security companies have filled the void via subcontracts with reconstruction contractors or directly with contracts from the Federal Government.²³⁵ Unfortunately, it appears that the contracts with these security companies have not been written in the most logical and cost-effective manner.

²³⁵ GAO Report, "Rebuilding Iraq: actions needed to improve use of private security providers," July 2005, p.3.

Normally, the Government bases the selected contract vehicle on the level of risk associated with the performance of that contract. For those contracts dealing with mature technologies or routine procedures where costs should be relatively known ahead of time, a Firm Fixed Price (FFP) contract vehicle is selected; a FFP puts all of the risk for performance on the contractor. However, if the technology is immature, costs cannot be accurately determined ahead of time, or the company would shoulder an inordinate amount of risk in accepting the contract, the Government will resort to a Cost Plus (CP) contract vehicle as an incentive for companies to take on that risk; a CP contract jointly shares the burden between the Government and the company because the company will be reimbursed for all costs incurred in the performance of the contract.

This rest of this chapter examines one Cost-Plus Fixed Fee (CPFF) contract valued at over \$200 million that the Government awarded to a private security firm for operations in Iraq.²³⁶ In particular, it focuses on the mechanisms and incentives, or lack thereof, built into the contract to ensure that the firm controls costs. There are many shortcomings with the contract structure used in this instance. First, the use of a cost reimbursement contract, by its nature, decreases the company's motivation to control its costs because it will be reimbursed for all allowable, allocable, and legal costs incurred in the performance of the contract. Second, the use of a fixed fee ensures that the company²³⁷ will make a guaranteed profit, regardless of performance or financial prudence. Last, the required costing data estimates were inadequate for a contract of this size.

B. COST REIMBURSEMENT CONTRACT

A cost reimbursement contract is normally used when there is emerging or immature technology, there are many unknowns, or the contractor faces disproportionate risk in the execution of the contract. Reimbursement is not contingent on mission accomplishment or success; the firm is responsible only for giving its "best effort." In this type of contract, the Government must reimburse the company for all allowable²³⁸,

²³⁶ Due to proprietary information, the company name and contract number will remain anonymous.

²³⁷ The terms "company", "contractor", "firm", and "business" will be used interchangeably in this paper.

²³⁸ Allowable costs are those that are reasonable and allocable, conform to applicable cost principles and standards, and are in accordance with the terms and conditions of the contract.

allocable²³⁹, and reasonable²⁴⁰ costs the company incurred in performing the contract. This relaxed definition means that the company will be reimbursed for any cost it can attach to the job at hand, regardless of whether the job could have been satisfactorily accomplished without the cost having been incurred. This provides little to no incentive for any company to control its costs. However, it does provide the company an incentive to incur costs that further both their business interests and mission accomplishment at the same time.

A Firm Fixed Price (FFP) contract vehicle, if sufficiently attractive, would be a more prudent way to ensure that businesses control their costs. In a FFP contract, the Government pays only the predetermined negotiated price agreed to by both the Government and the business. One could argue that a FFP contract is required in this case by claiming that security is a commercial good. According to the Federal Acquisition Regulations (FAR), a commercial item is any good or service that has been used, sold, or offered to the public. Additionally, it is any item that is a modification to, or has evolved from, a good or service previously offered to the public.²⁴¹ If private security, even private security provided in a hostile foreign land full of perils, meets the above criteria as a commercial item or service, then the Government is required to use a FFP contract.²⁴² It is worthwhile to note that a commercial company cannot normally be forced to accept any contract and companies will bid based on anticipated risks and benefits. A CPFF contract entices companies to bid in high-risk situations as most of the risk is placed on the Government while a FFP contract places most of the risk on the contractor.

Some might argue that it is not that simple; a FFP contract decreases a company's flexibility in a contingent environment. How can it know all possible costs ahead of time when the environment changes on a daily basis? Stan Soloway, President of the Professional Services Council, provides a valid argument for that rationale. He claims

²³⁹ Allocable deals with where a cost can be assigned. A cost must be chargeable to the contract for which it is incurred.

²⁴⁰ There are many tests for reasonableness, but for our purposes they are costs a prudent business person would pay in the conduct of competitive business.

²⁴¹ FAR Part 2.101.

²⁴² FAR Part 12.207.

that “requirements definition and our ability - or lack thereof- to clarify and define requirements in advance”²⁴³ is one of the primary reasons not to rely on a FFP contract. Too many times, FFP contracts are “being used in environments where they absolutely do not belong.”²⁴⁴ Additionally, Mr. Soloway believes that Governmental contracting officers are using FFP contracts as a safe strategy because of political pressure and increased oversight by multiple concerned parties.

Soloway also argues that “the government’s ability or lack thereof to effectively manage a contract is not a good basis on which to select a contract type.”²⁴⁵ Instead, the operational realities within which the contract will be executed should dictate the contract vehicle. If contract type is selected strictly by virtue of the Government’s oversight ability, then the Government will find itself involved in many bad business arrangements that are detrimental to the contractor as well as the Government. While this author agrees with Mr. Soloway, he believes cost-based contracts should be used only when risks are so high that competent companies would likely not bid on a FFP contract. As the environment becomes more stable and uncertainties disappear, subsequent follow-on years of existing contracts should become FFP, reflecting the reduced risk. Additionally, creative incentives must be built into contracts to ensure that costs are kept to a minimum.

C. FIXED FEE

Another problem with the security contract being examined is not only that it is a cost reimbursement contract, but also that there is a fixed fee.²⁴⁶ Regardless of the amount of cost incurred, the company still receives the predetermined fee (profit). Some argue that tying a set fee to the estimated costs does provide the firm an incentive to minimize costs; the more costs rise, the less significant the fee (profit) is in terms of overall costs and the lower their return on shareholder investment (ROI). Alternatively, the more costs are controlled, the higher the percentage of fee relative to the overall costs

²⁴³ Personal email correspondence with Mr. Soloway dated 22 Aug, 2005.

²⁴⁴ Ibid.

²⁴⁵ Personal email correspondence with Mr. Soloway dated 22 Aug, 2005.

²⁴⁶ This fee is a predetermined amount that represents the firm’s profit.

and the greater the firm's ROI.²⁴⁷ This is not a strong incentive, however; the firm will still make the same profit regardless of whether it controls costs or not. Therefore, the firm is indifferent to controlling costs unless costs threaten cancellation.

A solution to the fixed-fee problem is to tie the fee to the firm's ability to control its costs. Cost-Plus Incentive Fee (CPIF) and Cost-Plus Award Fee (CPAF) contract vehicles, where the incentive or award is based on cost control, do just that. The actual fee the firm can attain is relative to its ability to keep costs under its initial cost estimate, also called the target cost. If actual costs equal target cost, the firm wins the target fee. However, if actual cost is less than the target cost, the firm benefits by receiving the target fee plus a percentage of each dollar under the target cost.²⁴⁸ The higher the proportion of each dollar the firm can win by maintaining costs, the more incentive it has to maintain those costs. Conversely, the firm is punished for not maintaining costs. For every dollar of actual cost over target, the firm loses a proportion of the estimated fee.²⁴⁹ Theoretically, the firm could lose its entire fee if cost overruns are significant. Moreover, a penalty could be built into the contract whereby the firm would be penalized if costs greatly exceed its target. In this situation, the firm would not be reimbursed for a proportion or all of its costs above a certain threshold.

D. COSTING DATA

The Government's most powerful tool in validating a contractor's cost proposal is certified costing data. "Certified" means it is current, accurate, and complete at the time of submission and, more important, at the time of price agreement. The requirement for certified data ensures detailed and accurate estimates by the contractor and provides the Government restitution in cases where a contractor submits false or defective data.²⁵⁰ The only exemptions to certified data are for purchases of commercial items, when prices are set by law, when adequate competition exists, or when the requirement is unilaterally

²⁴⁷ For instance: Estimated costs=\$200M, Fixed fee=10M. Therefore the fee is $10/200 = 5\%$ of the contract, but if costs rise to \$250M, then the fixed fee is only $10/250 = 4\%$ of the overall contract. Conversely, if costs are only \$150M, then the fixed fee is $10/150 = 6.6\%$.

²⁴⁸ For instance, for every dollar under target cost, the firm may increase its fee by \$.80.

²⁴⁹ For instance, for every dollar over target cost, the firm's fee is decreased by \$.60.

²⁵⁰ Government is entitled to the amount of actual overpayment, a penalty equal to the overpayment, and any interest on the overpayment that resulted from the defective information.

waived by the contracting officer. As stated above, the security contract being analyzed most likely meets the requirements of a commercial item and therefore should have been offered as a FFP; certified costing data would have been exempted. However, this was not considered a commercial item and was exempted from the necessity only because the contracting officer waived the requirement.

On a multi-million dollar cost reimbursement contract²⁵¹, requesting other than certified cost and pricing data, as was done in this case, sends up red flags. There are no repercussions to the company if its estimates are wrong, and it is difficult for the Government to ascertain whether the estimates are accurate and realistic. Companies can submit low estimates in hopes that they are awarded the contract. Later, even if costs exceed the original estimate, they will be fully reimbursed. Additionally, in this contract, the Government relaxed the requirement even more by requesting only cost summary roll-ups.²⁵² Instead of providing detailed estimates, the submittals were in broad, catch-all categories. This easement makes it even more difficult for the Government to adequately predetermine and subsequently control costs.

E. CONCLUSION

While there is no perfect contract recipe that will fit every situation, certain lessons can be learned from this case. First, a realistic assessment must be made as to whether an item fits the FAR's definition of a commercial item. If it cannot, and a cost reimbursement contract must be used, then the Government needs to provide more incentives for companies to contain their costs as best they can. Structuring the award or incentive fee in a way that rewards a company for staying at or under cost and penalizes it for cost overruns can be a very effective tool. Additionally, requiring certified costing data, especially on lucrative contracts, is a good way to ensure that a company's estimates are legitimate and accurate; if estimates are not accurate, the Government is able to penalize those companies that submitted defective data resulting in overpayment. These recommendations do not represent a complete list of corrective actions but would provide

²⁵¹ The minimum threshold for requiring certified costing data is \$550,000

²⁵² A roll-up is a summary of the overall estimate that allows for quick analysis. Instead of providing a great deal of detail and the basis from which the estimate was made, it merely gives the total of the final estimate.

a good first step in controlling costs in the contingent environment. This is crucial because failure to control costs in a contract with a PMC negates the benefits of outsourcing to the PMC in the first place. Many of the Government's current contracts provide us with examples of what not to do; we can learn much by examining the Government's performance with these battlefield contracts. Taking these lessons learned and applying them to future contracts with PMC's will help ensure that the estimated economic benefits of outsourcing are realized.

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VII. CONCLUSION

A. REVISITING THE PAST

At the beginning of this paper, we learned how mercenaries have been around as long as conflicts have existed between people. Soldiers for hire have always been available to provide their exceptional skills in warfighting to a customer who desired such a skill. The demand for mercenaries has varied throughout history, as the means of fighting wars has continually changed over the centuries. When an individual's skill was more highly valued by battlefield tacticians, there was no shortage of work for the hired soldier. However, when troop concentration and overwhelming mass were preferred over the skills of the individual soldier, mercenaries fell out of vogue.

Soldiering for hire has taken many different forms. First there were allied tribesmen paid to fight alongside the Egyptian Pharaoh's army. Later, Hannibal hired an army of foreigners who wanted to see the Roman Empire defeated. In the Byzantine Empire, mercenaries took the form of the Varangian Guard, which was paid to protect the emperor. During the Middle Ages, hired vassals, or 'free lances', formed free companies, which sold themselves to local rulers who sought protection. The free companies gave way to the *condottieri* who signed legal contracts with their employers, offering their services in return for payment. Next, there were the barbarous *landsknecht* who sold their skill with the pike to the Holy Roman Emperor. During the Revolutionary War, the British hired a whole army of German Hessians to help them wage war on the fledgling United States. In the nineteenth century, the Nepalese Gurkhas and the French Foreign Legion gained notoriety for their success in battle.

B. PRESENT-DAY

In the twenty-first century, hired soldiers are most commonly employees of Private Military Companies (PMC). These companies have much in common with their mercenary forefathers; they sell their expertise in warfighting to a willing buyer. However, PMC's differ from their predecessors in that they are run as modern-day, for-profit businesses. Although it no longer operates, the South African based Executive Outcomes (EO) is the best example of a PMC. EO's successful operations in Angola and

Sierra Leone proved that warfare is no longer a monopoly of the state. Moreover, EO demonstrated not only that a private company could accomplish the same results as a government army, but also that it could do so in a more cost-effective manner than the government force could.

Although using PMC's can have positive implications, many issues must be contemplated before using them. As of yet, there has been no determination of what a private actor's status is when captured by the enemy. Additionally, there are no established regulations they must follow, and even if there were, there is no oversight body in place to monitor their actions; instead, the only control mechanism for these companies is the self-regulating free market. Devising solutions to the issues above is undoubtedly the first step that must be taken before a PMC's use can be contemplated; one solution is the use of a special-reserve program. Because the members of the PMC would be on active duty, they would be entitled to the same POW status as any other military member, be subject to the UCMJ, and be held accountable by the theatre combatant commander.

Assuming that solutions to the above concerns can be found, the economic advantages of using a PMC are only as good as the contract that binds the two parties together. If the contract does not give the company an incentive to control costs, it is likely that costs will be higher than otherwise, and the economic efficiency of using a PMC will not be fully realized. However, if contractual incentives are in place to ensure that the company is cost-effective, both parties stand to benefit financially from the arrangement. One way to give PMC's an incentive to control costs is to agree on a firm fixed price. This type of agreement puts the risk on the PMC, but encourages it to control costs.

Agreeing on a pre-negotiated price with a PMC has other benefits as well; it motivates the PMC to complete the contract quickly. One of the age-old criticisms of mercenaries is that they benefit from prolonged conflict; once the war is over, they are unemployed. Therefore, the argument is that it is in their best interest to ensure the war lasts as long as possible, regardless of the consequences. However, one must realize that PMC's are not the traditional type of mercenary; instead they are businesses. As with

any other business, time is money to a PMC. Therefore, the PMC is best served financially by ensuring a quick and successful end to any war it is hired to carry out.

The United States could possibly benefit from the use of PMC's. In the current war on terror, the armed services are stretched thin; the use of a PMC would help alleviate some of this burden. Additionally, as the defense budget continues to tighten, PMC's offer an additional outsource capability that could free up money to be used elsewhere. Although the use of PMC's would be highly controversial at first, that should not stop policy makers from pursuing this possibility.

C. FURTHER STUDY

Further study, research, and policy implementation is needed in many areas before PMC's use is actually implemented. First, an enhanced analysis of the ethical implications of such use should be undertaken. Second, the Geneva Conventions needs to be updated to clearly define the status of non-uniformed combatants that are captured by the enemy. The Conventions should also be updated with respect to mercenaries. Third, contractual aspects must be examined more closely. Any contract conducted on a battlefield will be very complex. Further study on how best to write that contract is needed. Additionally, there should be increased training for personnel who will have oversight of contracts that are carried out in a contingent environment. Last, there should be a study of how PMC's might best be incorporated into the U.S. political and military policy.

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